

2556
No. 12070

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MYRON E. GLENN, et al.,

Appellants.

vs.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD.,

Appellee.


TRANSCRIPT OF RECORD

Appeal From the District Court of the United States
for the Southern District of California,
Central Division

FILED

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PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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In the District Court of the United States for the
Southern District of California

Central Division

Civil Action No. 4327 RJ

MYRON E. GLENN, VERNON V. B. WERT, B. E.
MOSES, EUGENE L. ELLINGFORD, HER-
BERT S. KANEEN, HOWARD L. ANDERSEN,
CHARLES STANLEY MYRENIUS, HAROLD
A. BOYNTON, E. N. SWEITZER, JOHN M.
SMITH, W. H. CULBERTSON, F. E. GRIFFES,
CLARENCE ROGERS, M. E. ROACH, E. G.
EGGERS, C. C. BLENIS, J. A. HENLE, VER-
NER NEHER, A. L. HONNELL, PAUL W.
COCKRELL, C. C. PRINSLOW, J. D. BORDEN,
C. R. FRAZIER, LAWRENCE E. JACKSON, C.
E. FOSTER, ANDY G. AUSTIN, W. B. BUR-
TON, E. K. DICKERSON, OATHY G. HORNE,
L. S. MORGAN, MARION S. POSTON, L. A.
PHINNEY, ARCHIE TREGONING, and other
employees similarly situated,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD, a corporation,

Defendant.

SECOND AMENDED COMPLAINT UNDER FAIR
LABOR STANDARDS ACT OF 1938

Plaintiffs, by way of Second Amended Complaint, al-
lege as follows:

I.

Plaintiffs bring this action against defendant under
and by virtue of an Act of Congress of the United States

of America entitled "The Fair Labor Standards Act of 1938" (Act of June 25, 1938, C-678, 58 Stat. 1080; U. S. C., Title 29, Section 201, et seq.), hereinafter called the Act. [2]

II.

Jurisdiction is conferred upon the Court by Section 16(b) of the Act. Plaintiffs allege that, pursuant to Section 16(b) of the Act, they are maintaining this action for and in behalf of themselves and other employees similarly situated.

III.

The defendant, Southern California Edison Company, Ltd., at all times herein mentioned was and now is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, where said corporation is engaged in the generation, distribution and sale of electric power. During all the time and periods mentioned herein, the defendant Southern California Edison Company, Ltd., distributed and sold electric power within the State of California, which it generated at its California plants and at its Boulder Dam, Nevada, plant; said defendant, during the period herein set forth, distributed, sold and delivered electric power in excess of Twenty-five Million Dollars (\$25,000,000.00) annually to shipbuilding companies, aircraft manufacturers, oil producers, steel producers, aluminum producers, railroads, municipalities, the United States Army, the United States

Navy, radio stations, telegraph offices, telephone offices, interstate transportation companies, interstate airline transportation companies, and to hundreds of concerns engaged in the manufacture of goods for interstate commerce, which concerns, at all times herein mentioned, did use the said electric power, sold and distributed and delivered to them by the defendant to carry on their activities in interstate commerce and in the production of goods for interstate commerce. [3]

IV.

That the plaintiffs and all the other employees of said defendant, Southern California Edison Company, Ltd., similarly situated to the plaintiffs during all the times herein mentioned were, and now are, engaged in processes and occupations necessary to the generation, distribution, and sale of the aforesaid electric power by said defendant in interstate commerce, and the plaintiffs and other employees of the defendant, similarly situated to the plaintiffs during the time herein mentioned, were engaged in processes and occupations necessary to the production, distribution and sale of goods in interstate commerce by the customers of said defendant as hereinabove alleged.

V.

That since October 24, 1938, the effective date of the Fair Labor Standards Act, defendant employed the following-named persons, the plaintiffs herein, in the respective capacities and classifications set out herein after their names, to wit:

<u>Name</u>	<u>Classification</u>
Myron E. Glenn	Substation Operator and Attendant
Vernon V. B. Wert	Substation Operator and Attendant
B. E. Moses	Substation Operator and Attendant
Eugene L. Ellingford	Substation Operator and Attendant
Herbert S. Kaneen	Substation Operator and Attendant
Howard L. Anderson	Substation Operator and Attendant
Charles Stanley	
Myrenius	Substation Operator and Attendant
Harold A. Boynton	Substation Operator and Attendant
E. N. Sweitzer	Substation Operator and Attendant
Clarence Rogers	Substation Operator and Attendant
C. C. Blenis	Substation Operator and Attendant
J. A. Henle	Substation Operator and Attendant
Verner Neher	Substation Operator and Attendant
	[4]
C. R. Frazier	Substation Operator and Attendant
Lawrence E. Jackson	Substation Operator and Attendant
C. E. Foster	Substation Operator and Attendant
Andy G. Austin	Substation Operator and Attendant
W. B. Burton	Substation Operator and Attendant
E. K. Dickerson	Substation Operator and Attendant
Oathy G. Horne	Substation Operator and Attendant
L. S. Morgan	Substation Operator and Attendant
Marion S. Poston	Substation Operator and Attendant
Archie Tregoning	Substation Operator and Attendant
John M. Smith	Primary Service Man
W. H. Culbertson	Primary Service Man
A. L. Honnell	Primary Service Man
Paul W. Cockrell	Primary Service Man
C. C. Prinslow	Primary Service Man
J. D. Borden	Primary Service Man
L. A. Phinney	Primary Service Man
F. E. Griffes	Works Tender
M. E. Roach	Electrician
E. G. Eggers	Maintenance Carpenter

VI.

That on frequent occasions since the effective date of the Act, October 24, 1938, plaintiffs and other employees similarly situated to them employed by the defendant, were employed by the defendant for certain hours in excess of the work-weeks established by Section 7 (a), (1), (2), and (3), of said Act; that the defendant failed to pay the compensation for overtime hours in excess of the work-weeks prescribed by the provisions of said Section; that the dates of employment, number of hours and amounts of compensation for such overtime for the plaintiffs and other employees similarly situated, is a matter reported on the books kept by the defendant; plaintiffs have no accurate record of said dates, hours and [5] compensation claimed to be due, owing and unpaid from the defendant to the plaintiffs and other employees similarly situated, and, accordingly, an accounting should be rendered by the defendant to the plaintiffs from the time that plaintiffs and other employees similarly situated were so employed to the date that this action is adjudged, to determine the amount of said claims. That all of the records of said dates, hours and compensation claimed to be due, owing and unpaid from defendant to the plaintiffs and other employees similarly situated, are in the possession of the defendant, Southern California Edison Company, Ltd. That there is due and owing and unpaid from the said defendant to the said plaintiffs and other employees similarly situated, such compensation for the time during which they and each of them were employed in

excess of the work-weeks established by said Act in such amounts as shall be determined by said accounting.

VII.

That the plaintiffs and other employees similarly situated, are entitled to additional sums equal to the amounts claimed by them, as liquidated damages by virtue of the provisions of Section 16(b) of the Act; that plaintiffs have employed David Sokol, attorney, duly authorized to practice in the above-entitled court, and by virtue of said Section 16(b) said attorney is entitled to be awarded a reasonable attorney's fee herein.

Wherefore, plaintiffs pray that the defendant be required to account to plaintiffs and other employees similarly situated to plaintiffs, and each of them, for the total number of hours which each has been employed, up to and including the date that this matter shall be determined, in excess of the minimum work-weeks prescribed by said Act, and the amount of compensation that is required to be paid by said Act, and that upon said sums being computed, a judgment be entered for the plaintiffs and other employees similarly situated to plaintiffs and each of them, and [6] against defendant for such amounts as the accounting will show that they are entitled to receive, together with an additional amount as liquidated damages, and in addition, a reasonable sum for attorney's fees.

DAVID SOKOL

Attorney for Plaintiffs

[Endorsed]: Filed Jun. 23, 1945. Edmund L. Smith,
Clerk. [7]

[Title of District Court and Cause]

NOTICE OF MOTIONS TO DISMISS AND TO
MAKE THE SECOND AMENDED COM-
PLAINT MORE DEFINITE AND CERTAIN
AND TO STRIKE PORTIONS OF THE SEC-
OND AMENDED COMPLAINT

Comes now the defendant Southern California Edison Company, Ltd., a corporation, and moves the Court as follows:

I.

For an order dismissing the said action upon the ground that the said second amended complaint does not state a claim upon which relief can be granted to the plaintiffs or any of them.

II.

For an order dismissing the said action upon the ground that the said second amended complaint does not state a claim upon which relief can be granted to the plaintiffs or any of them in that it does not appear that the plaintiffs or any of them, were engaged in interstate commerce or in the manufacture of goods for interstate commerce. [8]

III.

For an order dismissing the action as to all unnamed parties upon the ground:

1. That the plaintiffs are not authorized to bring a class action or to sue for or on behalf of any other employees.

2. That Section 16(b) of the Act (Section 216 United States Labor Code) does not authorize a representative or class action, but merely joining in the same suit separate actions of individual employees.

3. That the said action has been pending since on or about the 19th day of March, 1945; that the said defendant on or about the 7th day of April, 1945, filed a motion to the original complaint asking for a provisional order that the action be dismissed as to all unnamed persons who did not within thirty (30) days from the date thereof intervene; that thereafter on or about the 1st day of May, 1945, plaintiffs filed an amended complaint and that on or about the 4th day of May, 1945, a similar motion was filed by defendant; that ample time has elapsed for any employee of the defendant believing himself to be similarly situated with the plaintiffs and desiring to bring such action, to join with the said plaintiffs.

4. That it be necessary for the defendant, in order to properly prepare for trial, to know the precise plaintiffs whose claims it is to meet.

IV.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

How or in what manner the plaintiffs or any of them performed work, labor or services for the defendant in interstate commerce, or in the manufacture of goods for interstate commerce. [9]

V.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The character of work and the normal hours of work of those plaintiffs designated as substation operator and attendant.

VI.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The character of work and normal hours of work of those plaintiffs designated as primary servicemen.

VII.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The character of work and normal hours required of the plaintiff F. E. Griffes, designated as works tender.

VIII.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain or to give the defendant a bill of particulars upon the following point:

The character of work and normal hours required of the plaintiff M. E. Roach, designated as electrician.

IX.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The character of work and normal hours required of the plaintiff E. G. Eggers, designated as maintenance carpenter.

X.

For an order requiring the plaintiffs to make the second [10] amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The approximate time and the number of excess hours which it is claimed each plaintiff was employed by the said defendant.

XI.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The amount of overtime compensation claimed to be due each plaintiff which it is claimed defendant failed to pay each said plaintiff.

XII.

For an order requiring the plaintiffs to make the second amended complaint more definite and certain, or to give the defendant a bill of particulars upon the following point:

The amount which it is claimed is due, owing, or unpaid from the defendant to each of said plaintiffs.

XIII.

For an order for a severance of the claims presented by those plaintiffs described in Paragraph V of the said second amended complaint as primary servicemen upon the ground that the questions of law and fact involved as to the plaintiffs described as primary servicemen are not the same as the questions of law and fact involved as to the claims of the other plaintiffs and particularly as to the plaintiffs described as substation operators and attendants, that the plaintiffs described as primary servicemen are not proper or necessary parties to a suit by the other plaintiffs, and that the plaintiffs described as primary servicemen are not similarly situated to the substation operators or to the other plaintiffs.

XIV.

For an order to strike from Paragraph III of said second [11] amended complaint, the words and figures:

“in excess of Twenty-five Million Dollars (\$25,000,000.00).”

Said motion being made upon the ground that said words are incompetent, irrelevant and redundant and allege no fact that it would be competent or relevant for the plaintiffs to prove at the time of the trial and does not afford any guide as to the volume or amount of electrical power distributed, generated or sold to alleged companies, or persons alleged to be engaged in the manufacture of goods for interstate commerce.

XV.

For an order striking from the second amended complaint on page 2, lines 20-21 the words:

“and other employees similarly situated”

where the said words occur at the end of Paragraph II, page 2, line 5, Paragraph IV, page 3, line 8, Paragraph VI, page 4, lines 23-24, 30-31, and page 5, lines 8-9 and 12, Paragraph VII, page 5, line 17.

Said motion is made (1) upon the ground that said words are redundant and irrelevant; that plaintiffs have no right to prosecute this suit for any person or persons other than themselves; and (2) upon all the grounds set out in support of defendant's third motion.

XVI.

For an order striking from Paragraph VI of the second amended complaint, in lines 2 to 6 on page 5, the following words:

“and, accordingly, an accounting should be rendered by the defendant to the plaintiffs from the time that plaintiffs and other employees similarly situated were so employed to the date that this action is adjudged, to determine the amount of said claims.” [12]

Said motion will be made upon the ground that the words moved to be stricken are redundant, irrelevant, and immaterial; that the plaintiff is not entitled to bring an action for an accounting; that the action authorized by the statute is an action at law to recover compensation claimed severally to be due the several plaintiffs for excess hours

which it is alleged and claimed the several plaintiffs were employed and were not paid for, and for liquidated damages resulting from such nonpayment; that the burden is upon each of the plaintiffs to establish the respective claim of each said plaintiff.

XVII.

For an order striking from the prayer of the complaint, page 5, lines 24-31, and page 6, lines 1-3, the following words:

“the defendant be required to account to plaintiffs and other employees similarly situated to plaintiffs, and each of them, for the total number of hours which each has been employed, up to and including the date that this matter shall be determined, in excess of the minimum work-weeks prescribed by said Act, and the amount of compensation that is required to be paid by said Act, and that upon said sums being computed,
* * * for such amounts as the account will show that they are entitled to receive, together with an additional amount as liquidated damages,”.

Said motion will be made upon the ground that the words moved to be stricken are redundant, irrelevant, and immaterial; that the plaintiff is not entitled to bring an action for an accounting; that the action authorized by the statute is an action at law to recover compensation severally claimed to be due the several plaintiffs for excess hours which it is alleged and claimed the several plaintiffs were employed and were not [13] paid for, and for liquidated damages resulting from such nonpayment; that

the burden is and will be upon each of the plaintiffs to establish the respective claim of each said plaintiff.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd.

1113 Edison Building, Los Angeles,
California

To: David Sokol, Attorney for Plaintiffs Named Herein:

Please Take Notice That the undersigned will bring the above motions on for hearing before this Court in Courtroom No. 3, United States Courts and Post Office Building, the City of Los Angeles, California on the 23rd of July, 1945, at 9:30 A. M., in the forenoon of that day or as soon thereafter as counsel can be heard.

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd.

1113 Edison Building, Los Angeles,
California

[Endorsed]: Filed Jul. 9, 1945. Edmund L. Smith,
Clerk. [14]

[Minutes: Monday, July 23, 1945]

Present: The Honorable Ben Harrison, District Judge.

This cause coming on for hearing on (1) motion to intervene as plaintiff, Lawrence G. Hagerman, and (2) motions to dismiss and to make the second amended complaint more definite and certain and to strike portions of the second amended complaint; David Sokol, Esq., appearing for the plaintiffs; Norman S. Sterry, Esq., appearing for the defendants.

Attorney Sterry makes a statement that he does not oppose said motion of Lawrence G. Hagerman to intervene. The Court makes a statement. Attorney Sokol makes a statement. The Court orders said motion to intervene granted.

Attorney Sterry makes a statement of said motions to dismiss and to make the second amended complaint more definite and certain, and to strike portions of said second amended complaint, and argues in support thereof.

The Court grants motion of defendants to strike so far as "and other employees similarly situated," however, the Court will consider any other intervening plaintiffs that desire to become parties to this action. The said motions to dismiss, etc., are otherwise denied. [15]

[Title of District Court and Cause]

ANSWER

Comes now the defendant, and for answer to the second amended complaint on file herein:

I.

(a) Specifically answering Paragraph III of said second amended complaint, defendant admits that it is engaged within the State of California as a public utility in the generation, distribution and sale of electric power. Denies that it has, or owns, any plant at Boulder Dam, and alleges in this connection that it is operating a plant at Boulder Dam in Arizona that is owned by the government of the United States, and that the defendant is operating said plant as the agent of the government of the United States and is generating electricity at said plant. [16]

(b) Defendant admits that it has sold in excess of Twenty-five Million Dollars' worth of electricity annually to all of its customers, including some customers engaged in interstate commerce and customers engaged in the manufacture of goods for interstate commerce; admits that some electricity sold by it to customers engaged in interstate commerce and to customers engaged in the manufacture of goods for interstate commerce was used by such customers to carry on their activities in interstate commerce and in the production of goods for interstate commerce, but defendant is without knowledge or information sufficient to form a belief as to the truth of the averment

that the electricity thus used was, during the period set forth in said second amended complaint, in excess of Twenty-five Million Dollars annually, or any other amount.

II.

Specifically answering Paragraph IV of said second amended complaint, defendant denies that any of the said plaintiffs were engaged in processes or occupations necessary to the production, distribution or sale of electrical power by the defendant in interstate commerce, or in processes or occupations necessary to the production, distribution or sale of goods in interstate commerce by customers of the said defendant. In this connection, defendant alleges that at all times mentioned in said second amended complaint, some of the electrical energy generated by it in Arizona was transmitted over its lines to certain of its substations in the State of California where its voltage was reduced, and said power so generated with its voltage so reduced was sold by the said defendant to some of its customers within the State of California. Defendant, at all times mentioned in said second amended complaint, likewise generated electrical power within the State of California which it transmitted to its various substations, and after reducing its voltage, sold it to some of its said customers within the State of California. Defendant, basing its answer further on its information and belief, alleges that all of [17] its said sales of electrical energy were intrastate sales and not interstate sales. Defendant further denies that plaintiffs, other than F. E.

Griffes, M. E. Roach and E. G. Eggers, have ever as employees of this defendant, been engaged, or are now engaged in processes or occupations necessary to the generation or sale of electrical power, whether in interstate commerce or otherwise. Defendant admits that each and all of the said plaintiffs other than F. E. Griffes, M. E. Roach and E. G. Eggers, have at some time since October 24, 1938, and many of them now are engaged as employees of defendant in processes or occupations incident to the distribution of electrical energy within the State of California. Defendant denies that plaintiffs F. E. Griffes, M. E. Roach and E. G. Eggers are now, or have at any time been engaged as employees of this defendant or otherwise, in occupations necessary or incident to the distribution or sale of electrical energy either interstate or intrastate, or otherwise. Alleges that plaintiff F. E. Griffes at all times since October 24, 1938, and the plaintiff M. E. Roach from on or about March 1, 1942, to August 1, 1943, and plaintiff E. G. Eggers from on or about June 1, 1944, have been and now are engaged as employees of defendant in occupations incidental to the generation of electrical power within the State of California.

III.

Specifically answering Paragraph V of said second amended complaint, defendant admits that all of the said plaintiffs have at some time subsequent to October 24, 1938, been employed by the defendant in the capacities set

out in said paragraph. Alleges that the several plaintiffs were employed by the defendant in the capacities alleged in said paragraph at the times as follows: [18]

Name	Classification	Period Since October 24, 1938 During Which Man Employed in Listed Classification
Myron E. Glenn	Substation Operator and Attendant	7/23/40 to 8/19/43
Vernon V. B. Wert	Substation Operator and Attendant	12/1/38 to Present Time
B. E. Moses	Substation Operator and Attendant	Before October 24, 1938 to Present Time
Eugene L. Ellingford	Substation Operator and Attendant	6/12/39 to the Pres- ent Time
Herbert S. Kaneen	Substation Operator and Attendant	10/29/40 to 11/1/43
Howard L. Anderson	Substation Operator and Attendant	1/3/42 to 9/27/43
Charles Stanley Myrenius	Substation Operator and Attendant	4/20/42 to 12/27/42
Harold A. Boynton	Substation Operator and Attendant	Before October 24, 1938 to 8/31/43
E. N. Sweitzer	Substation Operator and Attendant	Before October 24, 1938 to Present Time
Clarence Rogers	Substation Operator and Attendant	9/1/42 to Present Time
(Note: Entered service 5/1/37 as carpenter, and became mechanic's helper 1/1/40.)		
C. C. Blenis	Substation Operator and Attendant	9/25/44 to Present Time
J. A. Henle	Substation Operator and Attendant	9/16/43 to Present Time
Verner Neher	Substation Operator and Attendant	11/17/44 to Present Time
C. R. Frazier	Substation Operator and Attendant	Before October 24, 1938 to Present Time
[19]		
Lawrence E. Jackson	Substation Operator and Attendant	6/22/42 to 12/7/43 2/14/44 to Present Time (Military Leave of Absence)
C. E. Foster	Substation Operator and Attendant	1/8/45 to Present Time

Name	Classification	Period Since October 24, 1938 During Which Man Employed in Listed Classification
Andy G. Austin	Substation Operator and Attendant	9/9/43 to 10/9/44
W. B. Burton	Substation Operator and Attendant	3/23/43 to Present Time
E. K. Dickerson	Substation Operator and Attendant	Before October 24, 1938 to 6/12/42
Oathy G. Horne	Substation Operator and Attendant	4/13/42 to 9/1/44
L. S. Morgan	Substation Operator and Attendant	8/1/42 to Present Time
Marion S. Poston	Substation Operator and Attendant	2/15/43 to 7/18/44
Archie Tregoning	Substation Operator and Attendant	10/1/42 to Present Time
John M. Smith	Primary Service Man	9/7/44 to 4/16/45 4/22/45 to 6/15/45 6/18/45 to 7/1/45
W. H. Culbertson	Primary Service Man	Before October 24, 1938 to 9/1/42
A. L. Honnell	Primary Service Man	Before October 24, 1938 to 2/1/39 2/1/40 to 6/1/41 12/1/42 to Present Time [20]
Paul W. Cockrell	Primary Service Man	2/1/39 to 7/1/41 12/1/42 to 10/29/43
C. C. Prinslow	Primary Service Man	11/12/43 to 4/9/45
J. D. Borden	Primary Service Man	2/1/39 to 4/1/39 12/16/41 to Present Time
L. A. Phinney	Primary Service Man	Before October 24, 1938 to 9/7/44 9/25/44 to 12/31/45
F. E. Griffes	Head Works Tender	Before October 24, 1938 to Present Time
M. E. Roach	Attendant Hydro Electrician	3/1/32 to 8/1/43 8/1/43 to Present Time
E. G. Eggers	Carpenter Head Works Tender	9/1/36 to 6/1/44 6/1/44 to Present Time

IV.

(a) Specifically answering Paragraph VI of said second amended complaint, defendant denies that since October 24, 1938, the said several plaintiffs have frequently been employed by the defendant for certain hours in excess of the work-weeks established by Section 7 (a), (1), (2) and (3) of the Fair Labor Standards Act, hereinafter referred to as the "Act," but admits that said plaintiffs have occasionally been so employed; denies that they have not been paid the compensation equal to or in excess of that provided by said Act for such overtime hours in excess of the work-weeks prescribed by the provisions of said Act. Defendant admits that it kept books and records showing the hours worked and the payments made to its employees, including the plaintiffs. In this connection, defendant [21] alleges its record of the hours worked by the said plaintiffs was based upon the time cards made out by each said plaintiff and returned to defendant. Denies that the books or records of this defendant show any overtime performed by said plaintiffs, or any or either of them, that has not been paid for, or that defendant has in its possession any records or books showing any compensation for overtime or otherwise due to said plaintiffs, or any or either of them, or wages due for services other than such sums as may be due on the next pay-day for current services. In this connection, defendant alleges as follows:

(b) Defendant provided for the employment conditions and hours of work of its employees by bulletins issued from time to time and open to the inspection of all of its employees, the provisions of which bulletins it observed, and by observance, substantially communicated to each of its employees, including each and all of the plaintiffs.

(c) Defendant, in the manner hereinbefore alleged, provided that for the purpose of computing overtime, the annual hourly rate of pay of employees upon a monthly salary should be computed by multiplying the monthly salary by twelve, the number of months in a year, dividing the result by fifty-two, the number of weeks in a year, and dividing the weekly wage thus determined by forty.

(d) Defendant alleges that the plaintiffs listed and described as primary service men were paid a monthly salary, the amount of which provided an hourly wage in excess of that provided for by the Act, and that said salary was paid to and received by each of said plaintiffs as full payment for all services, whether active or inactive, of each said plaintiff except actual overtime services, as hereinafter alleged. Defendant, by the manner hereinbefore alleged, scheduled for five days a week eight hours of work for its primary service men, after which each of said primary service men was free to indulge in any activity he saw fit, except that during certain days he was required to respond to any telephoned emergency calls and was [22] required, if he left his residence, to leave with the defendant a telephone number where he could be reached, and each said plaintiff was paid overtime for any actual service performed by him beyond the total of forty hours per week or outside of his regular scheduled working hours.

(e) Defendant alleges that the plaintiffs described as substation operators and attendants were paid a monthly salary, the amount of which provided an hourly wage in excess of that provided for by said Act; that it was agreed between each of said plaintiffs and the defendant that the said monthly salary should be full payment for normal

services of each said plaintiff, whether active or inactive. Defendant further alleges that the normal active duties required of substation operators and attendants did not ordinarily require in excess of two to five hours a day, and often not more than two to three hours a day; that due to the nature of the work, there were no scheduled hours of work for said substation operators and attendants, each substation operator and attendant being allowed to arrange his own hours of work as he saw fit; that the normal active duties of substation operators and attendants, including these plaintiffs, can ordinarily be performed during the daytime; that each substation operator and attendant was required by defendant to live on the property of the defendant for five days each week in a house located near the substation and rented to him by defendant, in order to be able to render necessary service at any time in case of an emergency; that each substation operator and attendant was permitted to have his family live with him, and during the time he was not required to perform any active service could engage in any activity he desired which did not take him beyond such distance from the substation or his residence as to prevent his being able to hear a signal requiring emergency service. Defendant further alleges that because of the nature of the employment, it was understood and agreed between each said substation operator and attendant and the said defendant [23] that, evaluating the employment as a whole, the inactive duties of each said plaintiff and the normal active duties were the equivalent of eight hours of service. Defendant further alleges that, as hereinbefore alleged, each of said plaintiff substation operators and attendants at all times mentioned herein was paid a monthly salary which, as hereinbefore alleged, was paid and received as compen-

sation for all normal active and inactive services performed by said plaintiffs, but that in order to compensate said substation operators and attendants for extraordinary or emergency active duties, defendant, from on or about January 15, 1942 until on or about December 24, 1943, paid to substation operators and attendants, including such of the plaintiffs as were then in its employ in said capacity, overtime compensation for such extraordinary or emergency active duties as they were called on to perform between the hours of ten o'clock p. m. and eight o'clock a. m., and from on or about December 24, 1943 to the present time, paid such compensation for such services performed after six o'clock p. m. and prior to eight o'clock a. m., said hours being hereinafter referred to, for designation, as "nighttime hours." That the accounting department of defendant computed such overtime compensation in the same manner that it computed overtime compensation of any other operating employee, that is to say, by the method alleged in subparagraph (c) hereof, resulting in overtime payment to each substation operator and attendant for any extraordinary or emergency active duties equal to or in excess of the overtime payments provided for by said Act.

(f) Defendant alleges that the plaintiff, M. E. Roach, described in Paragraph V of the second amended complaint as an electrician, is now so employed, but he was employed as a station attendant at Kaweah plants Nos. 1, 2 and 3 from March 1, 1932, to August 1, 1943. That the plaintiff, E. G. Eggers, described in said Paragraph V as a maintenance carpenter, is now and has been head works tender at Kaweah plant No. 3 from June 1, 1944. That plaintiff, F. [24] E. Griffes, is now, and has been at all times mentioned in said second amended complaint,

head works tender at Kaweah plant No. 1. That the plaintiff F. E. Griffes lives, and for many years has lived in his own home which is near the defendant's property; that the plaintiffs M. E. Roach and E. G. Eggers lived in houses owned by the defendant because there was no suitable residence near their places of work. That each said plaintiff has no scheduled working hours, but is allowed to plan his normal day's work and his lunch hour to suit his convenience. Each said plaintiff is paid a monthly salary, the amount of which provided an hourly rate equal to, or in excess of the hourly rate provided for in said Act, which said monthly salary it was agreed between the defendant and each plaintiff should be full compensation for all normal services, active or inactive, performed by each said plaintiff; that in addition thereto, the said defendant has since May 1, 1941, paid to each said plaintiff overtime compensation which is equal to, or in excess of that provided for by said Act for any emergency service which the said plaintiff has been called on to perform for said defendant between the hours of four-thirty o'clock p. m. and seven-thirty o'clock a. m.; that after four-thirty o'clock p. m. each said plaintiff is, and at all times has been free to engage in any activities he sees fit, but by custom does not leave the immediate vicinity of his residence without first obtaining permission from the station chief.

(g) Defendant further alleges that upon and after the United States Government, through the War Manpower Commission, decreed a forty-eight hour week for all industry in Southern California, said defendant, pursuant to the mandate and directive of the government, required each and all of its operating employees, which included each and all of the plaintiffs in the defendant's service, to work

for six days each week instead of five, and paid each and all of the said plaintiffs herein for the sixth day of work overtime computed as hereinbefore alleged. Defendant alleges that it so paid all the [25] plaintiffs, including the said plaintiffs listed and described as substation operators and attendants, notwithstanding the fact that, as hereinbefore alleged, the active service rendered by each of said plaintiffs during the said sixth day did not require eight hours.

(h) Defendant admits that it has records showing the hours of work of its various employees, including the plaintiffs, and alleges that such records consist of and are based upon the time cards; that the time cards of each plaintiff have been made out and turned in by each said plaintiff, each said time card constituting the representations by each plaintiff making it out as to the time worked by said plaintiff. Defendant denies that any of its records show that there is any compensation due to the said plaintiffs, or any or either of them, or any other of its employees, whether for overtime or otherwise, other than current compensation due on the next pay-day. Denies that there is due, owing and unpaid from the defendant to the said plaintiffs, or any or either of them, compensation for any time which they were employed in excess of the work-weeks established by said Act, or otherwise. Denies that there is any accounting due, or that any accounting should be required by said defendant to said plaintiffs, or to any other employee.

V.

Specifically answering Paragraph VII of said second amended complaint, defendant, on its information and belief, denies that plaintiffs, or any or either of them, are

entitled to a reasonable, or any attorneys' fees, or to liquidated, or any damages, or that there is any sum or amount due or owing to plaintiffs, or any or either of them, whether as wages, damages, attorneys' fees or otherwise.

For a Further, Second, Separate and Distinct Answer and Defense, and by way of a plea of estoppel: [26]

I.

Defendant here repeats, readopts and realleges each and all of subparagraphs (b), (c), (d), (e), (f), (g) and (h) of Paragraph IV of its first answer and defense as fully as though here set forth at length.

II.

Defendant alleges that at all times from and since the effective date of said Act, and for a long time prior thereto, defendant furnished to each and all of said plaintiffs time cards, to be filled in and returned to defendant by each said plaintiff, showing the normal hours worked by each said plaintiff, and the overtime, if any, due to said employee. While defendant knew that the substation operators and attendants were required to remain upon the premises of the defendant, as hereinbefore alleged, and knew of the conditions of employment of F. E. Griffes, M. E. Roach and E. G. Eggers, as hereinbefore alleged, and knew that each of its primary servicemen was required during certain days after the expiration of the scheduled working hours not to leave his residence without advising the defendant where he could be reached by telephone, it had no way of knowing whether plaintiffs had performed overtime service for which they were entitled to compensation under

the Act or the custom or practice of said defendant, established as hereinbefore alleged, except by the said time cards turned in by said plaintiffs. Defendant further alleges that it paid each and all of the plaintiffs the overtime claimed by them. That in any case where any overtime service was actually rendered by any plaintiff and not reported to defendant, defendant had no way of knowing of such overtime service and no record or other evidence upon which to make any overtime payment to said plaintiff. To the knowledge of each and every plaintiff herein, said defendant relied upon the time cards of each of said plaintiffs, and made payment for the regular normal hours [27] of work and for overtime claimed by them upon their said time cards.

III.

Defendant alleges that if any said plaintiff herein performed any active overtime services for the defendant which he did not report to said defendant, defendant had no way of knowing of such overtime work performed by such plaintiff and not reported to defendant. Defendant alleges that if such overtime work so performed by any plaintiff had been reported to defendant, defendant would have paid said overtime and avoided incurring any further obligation or liability to said plaintiff.

IV.

As to plaintiffs designated and described as substation operators and attendants, defendant alleges that each of said plaintiffs reported on the various time cards furnished him as having performed eight hours of service per day, without making any claim for any overtime compensation, except for extraordinary or emergency active services performed during nighttime hours as here-

inbefore defined, although as hereinbefore alleged, none of said plaintiffs actually rendered eight hours of active service during any twenty-four hour period, and knew the defendant knew such to be the fact, and defendant did know such to be the fact and accepted the said time cards as evidence of the recognition by each said plaintiff of the agreement between each said plaintiff and defendant that in evaluating the employment of said plaintiffs as a whole, the inactive duties of each said plaintiff and the normal active duties were the equivalent of eight hours of service. Defendant relied upon said representations on the time cards of each said plaintiff, and each said plaintiff knew that the defendant so relied upon said representations. Defendant further alleges that if any of said plaintiffs had made or advanced any claim at any time that he was entitled to overtime compensation, except for extraordinary or emergency active services performed during the [28] nighttime hours as hereinbefore defined, that defendant would not have continued the employment of any of said substation operators and attendants at the said monthly salaries paid to them, but would have made other arrangements for compensation with them, or with others employed in their place, so as to have avoided any obligation to them or to any other substation operator and attendant for payment beyond their monthly salary and overtime for extraordinary or emergency active services performed during nighttime hours, as hereinbefore defined.

V.

As to the plaintiffs, F. E. Griffes, M. E. Roach and E. G. Eggers, defendant alleges that it relied upon their time cards, and that if any one of the said three plain-

tiffs had at any time by his time card or otherwise claimed or asserted that the custom observed by him of not leaving his residence after four-thirty o'clock p.m. without first communicating with the substation chief constituted any employment beyond eight hours a day or would entitle him to any overtime compensation, said defendant would not have continued the employment of said plaintiffs upon the said basis or salary, but would have made other arrangements with said plaintiffs or others employed in their places so as to have avoided any obligation to them, or any other employee so situated, for payment beyond their monthly salary and overtime for active services performed beyond forty hours a week.

VI.

As to plaintiffs designated and described as primary service men, defendant alleges that defendant paid to each said plaintiff overtime for any and all services performed by each of said plaintiffs in excess of forty hours per week as shown by the time cards delivered to it by each of said plaintiffs; and defendant further alleges that if any of said plaintiffs had made any claim either by time card filed with the said defendant or otherwise, that the requirement that after [29] their normal hours of work they leave a telephone number where they could be reached in case of emergency constituted any employment restraint or entitled them to overtime compensation, said defendant would not have continued the employment of said plaintiffs on said salary basis, and would have made other arrangements with said plaintiffs or others employed in their places to avoid any obligation to them or to any other primary service man for payment

beyond their monthly salary and overtime for actual services performed beyond forty hours per week.

VII.

Defendant alleges it would be inequitable and unjust to now permit said plaintiffs, or any of them, to claim that they had performed any services, active or inactive, for which they were entitled to overtime compensation, or to liquidated damages, or to any other form of compensation, and plaintiffs, and each of them, are estopped and ought not now to be heard to claim that they, or any of them, are entitled to any compensation whatever for any services performed by them for this defendant other than current compensation for the regular hours of work and overtime which may be due upon the next succeeding pay-day.

For a Further, Third, Separate and Distinct Answer and Defense,

I.

Defendant alleges that any award of liquidated damages against defendant as prayed for in this action will operate to deprive the defendant of its property without due process of law, and in violation of the Fifth Amendment to the Constitution of the United States.

For a Further, Fourth, Separate and Distinct Answer and Defense, and by way of plea of the Statute of limitations: [30]

I.

Defendant alleges that the said cause of action is barred so far as any liquidated damages to the plaintiffs Myron E. Glenn, Vernon V. B. Wert, B. E. Moses, Eugene L.

Ellingford, Herbert S. Kaneen, Howard L. Andersen and Charles Stanley Myrenius are concerned, under Subdivision 1 of Section 340 of the Code of Civil Procedure as to any recovery for services prior to March 19, 1944, performed by said plaintiffs or any of them.

For a Further, Fifth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the plaintiffs Myron E. Glenn, Vernon V. B. Wert, B. E. Moses, Eugene L. Ellingford, Herbert S. Kaneen, Howard L. Andersen and Charles Stanley Hyrenius, under Subdivision 1 of Section 339 of the Code of Civil Procedure, as to any recovery for services prior to March 19, 1943, performed by said plaintiffs or any of them.

For a Further, Sixth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the plaintiffs Myron E. Glenn, Vernon V. B. Wert, B. E. Moses, Eugene L. Ellingford, Herbert S. Kaneen, Howard L. Anderson and Charles Stanley Myrenius, under Subdivision 1 of Section 338 of the Code of Civil Procedure, as to any recovery for services prior to March 19, 1942, performed by said plaintiffs or any of them.

For a Further, Seventh, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred [31] so far as any liquidated damages to the plaintiffs, Harold A. Boynton, E. N. Sweitzer, John M. Smith, W. H. Culbertson, F. E. Griffes, Clarence Rogers, M. E. Roach, E. G. Eggers, C. C. Blenis, J. A. Henle, Verner Neher, A. L. Honnell, Paul Cockrell, C. C. Prinslow, J. D. Borden, C. R. Frazier, Lawrence E. Jackson and C. E. Foster are concerned, under Subdivision 1 of Section 340 of the Code of Civil Procedure as to any recovery for services prior to May 1, 1944, performed by said plaintiffs or any of them.

For a Further, Eighth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the plaintiffs Harold A. Boynton, E. N. Sweitzer, John M. Smith, W. H. Culbertson, F. E. Griffes, Clarence Rogers, M. E. Roach, E. G. Eggers, C. C. Blenis, J. A. Henle, Verner Neher, A. L. Honnell, Paul Cockrell, C. C. Prinslow, J. D. Borden, C. R. Frazier, Lawrence E. Jackson and C. E. Foster, under Subdivision 1 of Section 339 of the Code of Civil Procedure, as to any recovery for services prior to May 1, 1943, performed by said plaintiffs or any of them.

For a Further, Ninth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the plaintiffs Harold A. Boynton, E. N. Sweitzer,

John M. Smith, W. H. Culbertson, F. E. Griffes, Clarence Rogers, M. E. Roach, E. G. Eggers, C. C. Blenis, J. A. Henle, Verner Neher, A. L. Honnell, Paul Cockrell, C. C. Prinslow, J. D. Borden, C. R. Frazier, Lawrence E. Jackson and C. E. Foster, under Subdivision 1 of Section 338 of the Code of Civil Procedure, as to any recovery for services prior to May 1, 1942, performed by said plaintiffs or any of them. [32]

For a Further, Tenth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred so far as any liquidated damages to the plaintiffs, Andy G. Austin, W. B. Burton, E. K. Dickerson, Oathy G. Horne, L. S. Morgan, Marion S. Poston, L. A. Phinney and Archie Tregoning, are concerned, under Subdivision 1 of Section 340 of the Code of Civil Procedure as to any recovery for services prior to June 15, 1944, performed by said plaintiffs or any of them.

For a Further, Eleventh, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the plaintiffs Andy G. Austin, W. B. Burton, E. K. Dickerson, Oathy G. Horne, L. S. Morgan, Marion S. Poston, L. A. Phinney and Archie Tregoning, under Subdivision 1 of Section 339 of the Code of Civil Procedure, as to any recovery for services prior to June 15, 1943, performed by said plaintiffs or any of them.

For a Further, Twelfth, Separate and Distinct Answer and Defense, and by way of plea of the statute of limitations:

I.

Defendant alleges that the said cause of action is barred as to the plaintiffs Andy G. Austin, W. B. Burton, E. K. Dickerson, Oathy G. Horne, L. S. Morgan, Marion S. Poston, L. A. Phinney, and Archie Tregoning, under Subdivision 1 of Section 338 of the Code of Civil Procedure, as to any recovery for services prior to June 15, 1942, performed by said plaintiffs or any of them.

Wherefore, defendant prays that plaintiffs take nothing by this action, for its costs of suit herein, and for such other and [33] further relief as to the court may seem just in the premises.

GAIL C. LARKIN,
E. W. CUNNINGHAM,
ROLLIN E. WOODBURY,
NORMAN S. STERRY,
GIBSON, DUNN & CRUTCHER,

By Norman S. Sterry

Attorneys for defendant Southern California
Edison Company, Ltd.

Received copy of the within Answer this day of August, 1945. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Aug. 31, 1945. Edmund L. Smith,
Clerk. [35]

[Title of District Court and Cause]

INTERROGATORIES

To the Defendants, Southern California Edison Company,
Ltd.,

Please furnish written answers under oath for the following interrogatories:

1. State the hours worked by each of the plaintiffs and plaintiffs-interveners during each workweek between March 19, 1942, and the date hereof.

2. State the sums paid by the defendant Company to each plaintiff and to each intervener for each such workweek, and the hourly rate and/or other basis upon which such sums were figured.

3. State the nature of the work or duties performed by each plaintiff and by each plaintiff-intervener while employed by [36] the defendant Company during each workweek in the period from March 19, 1942, to the date hereof.

4. State between what hours of the day plaintiffs and plaintiffs-interveners who were station or substation employees were required to put in their normal day's work.

5. State whether or not the plaintiffs and plaintiffs-interveners who were station or substation employees were required after their normal day's work, to remain on the premises of the station or substation or other premises of the defendant Company; and if so, what duties, if any, were such plaintiffs and plaintiffs-interveners required to perform during the period when they were required to remain on the defendant Company's premises after their normal day's work during each workweek since March 19, 1942.

6. State whether or not at any time since March 19, 1942, there have been posted in any of the defendant Company's stations or substations, in station instruction books or log books, or on walls, doors, windows, screens, or elsewhere, notices setting forth the schedule of hours to be worked by employees at any such stations or substations; and, if at any time since March 19, 1942, such notices were removed after having been posted in any of the manners or methods or places above indicated, state when they were so removed and upon whose instructions.

7. State between what hours of the day plaintiffs John M. Smith, W. H. Culbertson, A. L. Honnell, Paul W. Cockrell, C. C. Prinslow, J. D. Borden, and L. A. Phinney, all of whom have been employed by the defendant Company as primary service men, were required to put in their normal day's work, during each workweek since March 19, 1942. [37]

8. State whether or not the plaintiffs listed in interrogatory No. 7 above as primary service men were required, after their normal day's work, to hold themselves on call or to remain on the defendant Company's premises; and if so, why were such plaintiffs required to remain on call or on defendant Company's premises after their normal day's work during each or any workweek since March 19, 1942.

9. State between what hours of the day plaintiff F. E. Griffes, who has been employed by the defendant Company as head works tender, was required to put in his normal day's work during each workweek since March 19, 1942.

10. State whether or not plaintiff F. E. Griffes was required, after his normal day's work, to remain either on call or on the premises of the defendant Company, and if so, why was plaintiff Griffes required to remain on call or to remain on the defendant Company's premises after his normal day's work during each or any workweek since March 19, 1942.

11. State between what hours of the day plaintiff M. E. Roach, who has been employed by the defendant Company as hydro station attendant and electrician, was required to put in his normal day's work during each workweek since March 19, 1942.

12. State whether or not plaintiff M. E. Roach was required, after his normal day's work, to remain either on call or on the premises of the defendant Company; and if so, why was plaintiff Roach required either to remain on call or to remain on defendant Company's premises after his normal day's work each or any workweek since March 19, 1942. [38]

13. State between what hours of the day plaintiff E. G. Eggers, who has been employed by the defendant Company as head works tender, was required to put in his normal day's work during each workweek since March 19, 1942.

14. State whether or not plaintiff E. G. Eggers was required after his normal day's work either to be on call or to remain on the premises of the defendant Company, and if so, why was plaintiff Eggers required to be either on call or to remain on the premises of the defendant Company after his normal day's work during each workweek since March 19, 1942.

15. State what orders, instructions, bulletins, directions, instruction sheets, etc., have been issued by defendant Company to substation employees, water tenders, works tenders or head works tenders, and primary service men, in effect since March 19, 1942, and dealing with matters of duties, responsibilities and hours of work required of them. (This interrogation may be replied to by the furnishing of copies of such documents.)

16. State whether or not the plaintiffs and plaintiffs-interveners during their employment by defendant Company, engaged in work necessary to the production and distribution of goods in interstate and/or foreign commerce; and if not, answer the following interrogatories, numbered 16-a to 16-m inclusive.

16-a. State what is the area served by each station or substation where the plaintiffs and plaintiffs-interveners were or are employed.

16-b. State the names of the customers other than house- [39] holds in each of the areas so serviced.

16-c. State the origin of the electric power coming into, and the destination of the electric power as it is distributed from each station or substation where any of the plaintiffs and plaintiffs-interveners have been employed at any time since March 19, 1942.

16-b. State how and in what respect the stations or substations at which any of the plaintiffs and plaintiffs-interveners are or have been employed since March 19, 1942, are connected with other facilities and operating parts of the defendant Company.

16-e. State the names of the defendant Company's customers, other than households, who are or have been serviced since March 19, 1942, by the defendant Company's primary servicemen John M. Smith, W. H. Culbertson, A. L. Honnell, Paul W. Cockrell, C. C. Prinslow, J. D. Borden, and L. A. Phinney, all plaintiffs in this action.

16-f. State the destination of the electric power generated by means of the water tended by plaintiff head works tender, F. E. Griffes, since March 19, 1942.

16-g. State whether or not the stations and substations at which were employed or now are employed any of the plaintiffs and plaintiffs-intervenors, were and now are so integrated with the rest [40] of the physical processes and functional facilities of the defendant Company's operations so that said stations and/or substations were and are part of the entire system of transmission, generation, and distribution of electric power by the defendant Company; and if not, state what connection, if any, said stations and/or substations have with the generation or transmission, or distribution of electric power by the defendant Company.

16-h. State whether or not the entire Edison system, including substations and hydro stations, is an interlocking and inter-connected system involved as a unit in the generation and distribution of electric power by the defendant Company.

16-i. State whether or not there is any method of determining which of the power comes, day by day, and week by week, from within the State of Cali-

fornia, and which comes from without the State of California.

16-j. State whether or not when there have been breakdowns in the transmission and generation system of the defendant Company within the State of California, the Company's apparatus automatically transfers transmission and/or generation over to the Boulder Dam Lines.

16-k. State whether or not electric power from any source may go anywhere in the system, of defendant company.

16-l. State whether or not the power generated in [41] the Company's generation plants and centers pours into central distributing points serving the system as a whole of defendant company.

16-m. State whether each operating unit of the defendant Company is independent, or whether it depends for help, assistance, operation, and function on some other operating part or parts of the defendant Company.

17. Set forth what, if any, Manual of Instructions for Substation Operators has been in effect since March 19, 1942, for each substation.

18. Set forth what, if any, Dispatcher's Bulletins have been in use for each substation since March 19, 1942.

19. Set forth the records from the Log Books of each substation at which plaintiffs and plaintiffs-intervenors worked since March 19, 1942, showing calls and duties after 5:00 P.M. and after the normal working day.

20. (a) State what services or duties are designated by the defendant company as "active services."

(b) State what services or duties are designated by the defendant company as "inactive services."

(c) Set forth the bulletin or other instruction sheet in whatever form in which appears the foregoing definition of active vs. inactive duties or services.

Dated, Los Angeles, October 15, 1945.

DAVID SOKOL

Attorney for Plaintiffs and Plaintiffs-Interveners [42]

[Affidavit of service by mail.]

[Endorsed] Filed Oct. 23, 1945. Edmund L. Smith,
Clerk. [43]

[Title of District Court and Cause]

ANSWER AND OBJECTIONS TO INTERROGA- TORIES PROPOUNDED BY THE PLAINTIFFS

Comes now the defendant and files its answer and objections to the interrogatories propounded by the plaintiff:

Explanation to Answers

Many of the interrogatories seek information as to the hours of work, rate of pay, etc., of the plaintiffs and plaintiff-interveners with reference to the respective job classifications which it is alleged the respective plaintiffs and plaintiff-interveners held. Many of the plaintiffs and plaintiff-interveners have, during the period inquired of, to-wit: from March 19, 1942 to the date of the filing of these answers, worked at different periods in other job classifications. As there is no allegation that any compensation or damages is due to any of said plaintiffs or plaintiff- [44] interveners for such other work, it

is assumed by the defendant that there is no claim made therefor, and all answers, regardless of their form, have been limited to the work by the plaintiffs and plaintiff-interveners in the respective job classifications alleged to have been respectively held by them.

In many of the answers it has also been thought advisable to make separate answers as to the plaintiffs and plaintiff-interveners in their separate classifications of work, this by reason of the factual differences in the various classifications and because of the fact that a supervisor of one of defendant's departments could not properly verify an answer dealing with all job classifications not under his supervision. To that end, several verifications of the answers have been thought necessary, limited by each affiant to the men working under the particular division of defendant of which he is in charge.

1. Answer to Interrogatory No. 1—

(a) Substation Operators and Attendants: The Company has no records of the hours worked by any of the plaintiffs and plaintiff-interveners classified as Substation Operators and Attendants during the time inquired of, from March 19, 1942 to the date hereof, except such as are made up from the time cards made out by said employees themselves. These records show that except in the case of absence from work because of illness, vacation or other cause, each of said Substation Operators and Attendants performed services of eight hours per day for five days per week, and such overtime services as such individual employees reported.

Commencing on or about December 1, 1943 and until September 1, 1945, the Company, pursuant to the directives of the United States Government through its proper authorities declaring Southern California a critical labor

area and decreeing a forty-eight hour week, required Substation Operators and Attendants to remain in attendance [45] at their said stations for six days a week, for which they were paid overtime for eight hours and which was normally carried and shown on their time cards as overtime. They were also during said period paid overtime for any active services performed during the hours defined therein as night-time hours, as in said answer alleged.

See, also, in further explanation, defendant's answer to Interrogatory No. 4.

(b) Hydro-Plant Attendants and Headworks Tenders: All of the plaintiffs and plaintiff-interveners who are classed as Hydro-Plant Attendants and Headworks Tenders were considered by the Company to be week-period employees on monthly salary. The active work required of such classified employees ordinarily would take from four to eight hours per day, depending on local conditions. The only records which the Company has of the hours worked by each such employee are taken from the time cards made out by the employee himself and sent to the Company. Each said employee, during the time between March 19, 1942 and the present date, has filed time cards showing (except where absent for personal reasons) eight hours of service for each day on duty, and prior to November 1, 1943, five days per week on duty, or forty hours per week, and between November 1, 1943 and September 1, 1945, six days per week or forty-eight hours per week, plus overtime shown by the individual reports.

In addition to the monthly salary, the Company has paid to each of said employees overtime for all hours of service reported in excess of forty per week for any

work week, and, in addition thereto, overtime for any active service performed between the hours of 4:30 P. M. and 7:30 A. M.

Commencing on or about the 1st day of November, 1943 and until September 1, 1945, pursuant to the directives of the United States Government declaring Southern California a critical labor area and requiring a 48-hour work week, the above employees were required to work six days per week instead of five, said employees [46] reporting time in excess of forty hours per work week as overtime.

(c) Primary Servicemen: The plaintiffs and plaintiff-intervenors listed as Primary Servicemen were employed on a monthly salary and were required to perform eight hours of service for the Company for five days per week. The time of those hours varied with the district, being from 8:30 A. M. to 12:30 P. M., and 1:30 P. M. until 5:30 P. M., or from 8:00 A. M. to 12:00 noon, and 1:00 P. M. until 5:00 P. M. In addition, Primary Servicemen were paid overtime for any services performed outside of such hours. Each said Primary Serviceman made out his own time report, and each such report during the time inquired of, to-wit: from March 19, 1942 until the date hereof, with the exception of times any of said plaintiffs and plaintiff-intervenors were absent because of sickness, vacation or other cause, shows forty hours of service per work week, plus the overtime shown by the individual reports of the said plaintiffs and plaintiff-intervenors. The sixth day of the period during which the Primary Servicemen were on a forty-eight hour week was reported, and is shown by the Company's records, as overtime.

2. Answer to Interrogatory No. 2—

The Company cannot answer as to the amount paid to the plaintiffs and plaintiff-intervenors by the week, as it did not hire or pay any of the said plaintiffs or plaintiff-intervenors by the week. All were hired and paid by the month. In converting the monthly salary to an hourly rate for the purpose of overtime, the defendant multiplied the monthly salary by 12, the number of months in the year, and divided the result by 2080, the same being 52 (the number of weeks in a year) times 40 hours per week.

As there are a different number of working hours in each month, the Company, for the purpose of converting the monthly salary to an hourly rate for the purpose of distribution and for deductions in the case of absence from work, divided the monthly salary by the number of working hours in the particular month. [47]

The amounts earned by each plaintiff and plaintiff-intervenors from March 19, 1942 to and including October 31, 1945, in the specified job classifications alleged by them, are shown by exhibits or schedules filed herewith, which also show any deductions for absence from work and all overtime paid. The final column shows the total amount earned, which amount was paid the employees, less deductions required by State and Federal law and other authorized deductions.

While the interrogatory calls for information from March 19, 1942 to the date of the filing of the answers, it is impossible at the time of preparing the answers so as to be able to file them on December 5, 1945, to carry such information beyond the 31st day of October, 1945.

As indicated in the explanation preceding all the answers and by the third paragraph of this answer, the schedules

show only the earnings of the plaintiffs and plaintiff-interveners while working in the particular job classifications alleged, and do not reflect the earnings of any of them when working during the period inquired of from March 19, 1942 to October 31, 1945, in other classifications alleged, nor do they show the earnings of any of the plaintiffs or plaintiff-interveners while classified as Substation Operators and Attendants while working in a substation operated on three shifts.

3. Answer to Interrogatory No. 3—

(a) Substation Operators and Attendants: The duties of plaintiffs and plaintiff-interveners classified as Substation Operators and Attendants were, during the period inquired of, to-wit: March 19, 1942, to the date hereof, substantially to inspect stations daily, report to switching center, take instrument and battery readings and record same, and maintain daily log and other operating reports; to perform routine and emergency switching of power lines in accordance with telephoned orders from their switching center [48] and written instruction; to keep in order the station building and at some stations do necessary painting of cottage in which he lives; to maintain lawns and grounds around station and cottage in which he lives. Some Substation Operators and Attendants are required to answer customer telephone calls and report the same to the Primary Servicemen or switching centers.

See, also, defendant's Answer to Interrogatories Nos. 4, 5 and 20.

(b) Hydro-Plant Attendants and Headworks Tenders: In brief, the duties of the Hydro-Station Attendant are to attend turbines and generator, make routine inspection of power-plant equipment, perform necessary manual

operations of hydraulic and electrical equipment in starting, stopping and clearing equipment for work, clean and lubricate turbines, generators and auxiliary equipment; to read and record various indicating instruments and maintain daily logs; to perform miscellaneous work in maintaining appearance of station and camp and related work as required.

In brief, the duties of the Headworks Tender are to attend to and operate equipment installed at intakes of hydro-plants for control of water flow, patrol water-flow lines to inspect for leaks, breaks and general conditions, service and lubricate gate mechanism, clean trash rack and sluices sand; maintain yard and local trails, make simple oral reports of weather, flow conditions and related work as required.

(c) Primary Servicemen (Santa Paula District—John M. Smith, W. H. Culbertson and L. A. Phinney; Huntington Beach District—A. L. Honnell, P. W. Cockrell and C. C. Prinslow): Maintains service on distribution lines and street light circuits in his district, makes emergency repairs to restore interrupted service, and patrols lines to note conditions hazardous to continuous service, restores service by replacing primary and secondary fuses. As instructed by switching center, switches and parallels circuits in unattended [49] substations, patrols street lights in his district, an average of one night a week.

Vernon City District—J. D. Borden:

Maintains service on distribution lines and street light circuits in his district, makes emergency repairs to restore interrupted service, and patrols lines to note conditions hazardous to continuous service, restores service by replacing primary and secondary fuses. As instructed by switching center, switches and parallels circuits in

unattended substations, patrols street lights in his district twice a week when on P. M. schedule and answers fire calls in Vernon City area.

4. Answer to Interrogatory No. 4—

(a) Substation Operators and Attendants: All of the plaintiffs and plaintiff-interveners classified as Substation Operators and Attendants were, during the period inquired of, to-wit: March 19, 1942 to the date hereof, employed by the Company upon a monthly salary which the Company believes and contends was payment for any and all services performed by them, however legally classified. They were required to live upon the defendant's premises for five days of the work week except between December 1, 1943 and September 1, 1945, when they were required to live upon the premises six days of the work week. They had no scheduled working hours and were subject to call during twenty-four hours per day during the regular scheduled working days. The active duties which were required of them would not take more than two to five hours per day, and the Company believes and contends that their entire employment was regarded by them and by the Company as the equivalent of the employment of eight hours of active service. At all of the defendant's stations certain hours were designated when readings were to be taken and reports were to be made to the switching center. These hours varied as between the various stations.

See, also, defendant's Answer to Interrogatory No. 20 and [50] to subdivision (a) of its Answer to Interrogatory No. 5.

(b) Hydro-Plant Attendants and Headworks Tenders: Hydro-Plant Attendants and Headworks Tenders are classed as week-period employees with no regular schedule

of working hours. Usually, however, they are expected to perform their active work between 7:30 A. M. and 4:30 P. M., with one hour off for lunch. When they are called on to perform any active work after 4:30 P. M. and before 7:30 A. M., they were paid overtime for the time which they reported.

5. Answer to Interrogatory No. 5—

(a) Substation Operators and Attendants: See defendant's Answers to subdivision (a) of Interrogatory No. 4 and to Interrogatory No. 20.

Plaintiffs and plaintiff-interveners who were Substation Operators and Attendants were required as a part of their job, during five days a week, except between December 1, 1943 and September 1, 1945, when they were required during six days a week, to remain at or near their homes or living quarters located on or adjacent to the substation premises, in order to answer alarms or emergency calls.

(b) Hydro-Plant Attendants and Headworks Tenders: See defendant's Answers to subdivision (b) of Interrogatory No. 4 and to Interrogatory No. 20.

Hydro-Plant Attendants were required during five days a week, except between November 1, 1943 and September 1, 1945, when they were required six days a week, to live on defendant's premises in order to answer alarms or emergency calls.

Headworks Tenders were required during five days a week, except during said critical period from November 1, 1943 to September 1, 1945, when they were required six days a week, to live either on or reasonably near the Headworks in order to be able to answer alarms and emergency calls.

Both such employees could leave their residence after 4:30 [51] P. M. to attend to any personal matter on obtaining permission so to do from the Station Chief. During the last eighteen months this permission has been granted as a matter of course and refused only when local conditions did not permit. Prior to that it was granted only in the case of an emergency.

6. Answer to Interrogatory No. 6—

(a) Substation Operators and Attendants: There was in each substation a substation departmental letterbook containing bulletins from the substation division and departmental orders, bulletins and instructions. In each substation there was also a folder of station instructions (prepared by the station attendant, sometimes referred to as the "Station Chief"). Said instruction book was not posted but was available for inspection by the Substation Operators and Attendants.

In addition thereto, at many of the stations there was posted from time to time a schedule of the days to be worked by the various operators. These would necessarily be changed from time to time and records of them have not been retained.

In each substation there was also a log book kept, in which the Substation Operator and Attendant, or operators and attendants, as the case might be, were supposed to note the various readings and switch operations performed by them. So far as can be ascertained, no bulletins have been posted. The station instructions and departmental letters and books have from time to time been revised and the letters or instructions superseded have not been preserved. In some of the stations some of the log books have recently been removed to the office of Superintendent of Substations for the purpose of making compilations as requested by counsel for plaintiffs.

(b) Hydro-Plant Attendants and Headworks Tenders: So far as can be ascertained, no notice has been posted at any time which sets forth any schedule of hours to be worked by the plaintiffs and [52] plaintiff-intervenors. However, a work schedule is posted on the bulletin board of the Canyon office which shows the days on which each employee is on duty and also the employee's regular days off.

7. Answer to Interrogatory No. 7—

(c) Primary Servicemen: The hours required of the Primary Servicemen named in Question No. 7 are as shown in the Answer to subdivision (c) of the first Answer. It is impossible to state the time more definitely due to the fact that the schedules of work were made up in each district monthly and were changed from time to time as local conditions required and no record of them kept. Hence, the normal working hours would depend upon the district, time and the place, but were eight hours per day within the hours specified in subdivision (c) of the first Answer.

8. Answer to Interrogatory No. 8—

(c) Primary Servicemen: The employees referred to in Question No. 8 and listed in No. 7 were not required at the end of their normal eight hours of work to remain upon the Company's premises, but could return to their own homes or go any other place they saw fit and engage in any activities they saw fit, the only requirement being that on their scheduled work days, if they left their homes, they were required to inform the switching center where they could be reached by telephone in order to be available in the event their services would be required in case of trouble in the area in which they worked.

9. Answer to Interrogatory No. 9—

(b) Hydro-Plant Attendants and Headworks Tenders: There was no schedule of hours in which the plaintiff, M. E. Griffes, performed the normal duties of his employment as set out in Answer to 3 (b). As stated, he was paid overtime for such time as he [53] reported for any emergency work he was called on to do by the Company after 4:30 P. M. and before 7:30 A. M.

10. Answer to Interrogatory No. 10—

(b) Hydro-Plant Attendants and Headworks Tenders: See Answer to 5 (b).

11. Answer to Interrogatory No. 11—

(b) Hydro-Plant Attendants and Headworks Tenders: Ordinarily M. E. Roach would perform his normal active duties between 7:30 A. M. and 4:30 P. M., with one hour off for lunch, but the times within which such duties could be performed were occasionally varied by the Station Attendants with permission of the Station Chief.

See, also, Answer 5 (b).

12. Answer to Interrogatory No. 12—

(b) Hydro-Plant Attendants and Headworks Tenders: See Answer to 5 (b).

13. Answer to Interrogatory No. 13—

(b) Hydro-Plant Attendants and Headworks Tenders: There was no schedule of hours in which the plaintiff, E. G. Eggers, performed the normal duties of his employment as set out in Answer to 3 (b). As stated, he was paid overtime for such time as he reported for any emergency work he was called on to do by the Company after 4:30 P. M. and before 7:30 A. M.

14. Answer to Interrogatory No. 14—

(b) Hydro-Plant Attendants and Headworks Tenders:
See Answer to 5 (b). [54]

15. Answer to Interrogatory No. 15—

(a) Substation Operators and Attendants: Dispatcher's bulletins in each of the stations involved, substation departmental letter-book referred to in subdivision (a) of defendant's Answer to Interrogatory No. 6, station instructions, certain orders of the Comptroller's Department, operating departmental orders and substation division orders.

(b) Hydro-Plant Attendants and Headworks Tenders: Station instructions and dispatcher's bulletins are on file at hydro-plants and in the General Office. In addition, there were in the Station Chief's office, available to the inspection of any of said employees, bulletins and orders from the Comptroller's Department and departmental orders.

(c) Primary Servicemen: As to Primary Servicemen, no bulletins or instruction sheets or written orders have been issued within the period inquired of except as follows:

(1) In each district there is kept by the Primary Servicemen a switching procedure book which gives instruction on the operation of individual circuits in cases of emergency. Instructions and maps are available for the Primary Servicemen to parallel or open certain sections that are in trouble. These books vary in each district, there being thirty-one districts. Each book contains from fifteen to forty pages which have been changed from time to time to meet varying conditions in the respective districts, records not being kept in the general office, and,

as a general rule, when any change is made, the page so changed is not preserved.

(2) The general bulletin by the Superintendent of Distribution of the district of January 14, 1943, instructing Primary Servicemen to keep a log of overtime, the purpose of the said bulletin being to obtain data to see if additional servicemen were needed at any of the said districts.

(3) A bulletin of April 4, 1944, by the Superintendent [55] of Distribution revoking the direction in the bulletin of January 14, 1943.

(4) A bulletin issued by the Superintendent of Distribution on September 25, 1945, after his attention had been called to certain depositions in this case in which certain of the plaintiffs and plaintiff-interveners had made statements which he considered incorrect.

16. Answer to Interrogatory No. 16—

The defendant objects to answering Interrogatory No. 16 on the ground that it calls purely for a conclusion, which is to be drawn from the law which the Court finds applicable to the facts which it determines to be true.

16-a. Answer to Interrogatory No. 16-a—

The defendant objects to answering this question upon the ground that it would require an unreasonable expenditure of time and money so to do, and that the question is not susceptible of definite or accurate answer.

This question cannot be answered accurately since there are interconnections between some of the stations at distribution voltages. Under such conditions, the load area boundaries will shift with changing loads to such an extent that a great number of load studies would have to be made in order to give the determination.

However, most of the stations in question are not interconnected by distribution voltage lines, and maps can be prepared which will bound the areas served by each station. Since the boundary lines are not straight lines, and line sections are at times switched from station to station, and considerable overlapping occurs, a field check would be required to map accurately the area served by each station. The time required for such a field check and area map, according to the best estimate possible to be made, would be, per station: [56]

Prepare the Area Map . . .	24 Man Hours
Field Check . . .	40 Man Hours
<hr/>	
Total per Station . . .	64 Man Hours
Total 65 Stations . . .	4160 Man Hours

Assuming that the men are available for such work, the estimated cost to the defendant would be \$5,865.00. The area maps would be prepared by the Map Department reporting to the Superintendent of Distribution, and the field check would be made by the local District organization who also report to the Superintendent of Distribution.

There are maps available in the general office file of the Superintendent of Distribution which map the area comprising each of the Company's geographical districts. The Company's substations in question are approximately located on these maps. The area served by each station can be generally, but not definitely, ascertained by the use of the district maps. There are 31 district maps, with between three and four stations shown on each of said maps.

16-b: Answer to Interrogatory No. 16-b—

The defendant objects to answering the question upon the ground that it would take an unreasonable expenditure

of time and money to answer the same, and that the question is not susceptible of definite or accurate answer.

The defendant has records of its customers, but the names are not to be found in any single book or in any centralized record. Each district has a meter record of its own customers and an alphabetical file index of their names, residence or place of business and their classification. The Company cannot, without an expenditure of approximately 270 manhours, at an estimated cost of \$230.00, furnish an unclassified list of its customers, and it cannot, without an estimated expenditure of approximately 15,800 man hours, at an estimated cost of \$21,250.00, exclusive of the time and cost necessary to prepare maps therefor, give such lists of its customers served by each substation. The records of its customers are kept without any [57] reference to the substations serving such customers, and any one substation may serve customers in one, two or three commercial districts. On one side of the street the customers may receive power that has passed through one substation, and on the other side of the street through another substation which may be in a different district. In order to determine the names of the customers served by each substation, area maps would have to be prepared necessary to answer Interrogatory No. 16-a accurately; then a field check would have to be made by local commercial district organizations using such area maps, and from such check, lists prepared of customers, except householders, in each, and the lists field-checked against the area maps, with particular emphasis at points of overlapping areas. Furthermore, due to "connects" and "disconnects" and some switching of line sections between stations, the lists would be correct only at the time the check was made, and might easily become substantially incorrect or inaccurate at any later time, and

would not necessarily be correct or accurate as to any preceding time.

16-c. Answer to Interrogatory No. 16-c—

The Edison main transmission and generating system consists of three major sources of power interconnected by 220,000 volt transmission lines. The three major sources are Big Creek, Long Beach Steam Plant, and Boulder Dam. There are in addition several small generating plants within the State of California. Each of the substations involved is so constructed that it may receive power from the three major sources. The San Joaquin Valley Area stations of Porterville, Strathmore, Terra Bella, Tipton, Tulare, Venice Hill, Venida, Visalia, Woodville, Delano, Earlimart, Goshen and Lindsay, are operated at 60 cycles, and are normally mechanically attached to the balance of the system through the shafts of frequency changer sets, so that the electricity received by the above named stations is electricity generated by the frequency changers. The frequency changers are operated normally by power received from Big Creek, but [58] during the time inquired of have been operated by electricity flowing from Boulder and from the Long Beach Steam Plant.

When electricity is not received at the above named San Joaquin Valley Substations through the frequency changers, it is received from an isolated 220,000 volt line supplied by Big Creek generators which are temporarily operated at 60 cycles or from 60 cycle generating sources in their immediate area. With the exception of a few isolated customers who are also served through frequency changes, the balance of the system is operated at 50 cycles.

All of the stations other than the above named San Joaquin Valley Substations have at various times received electricity from all three major sources above enumerated. It is impractical, and practically impossible, to give the source of power supplying the various substations due to the fact that as indicated they may receive power from all three major sources, and frequently do receive from all three sources at varying hours during each day. It is impossible to determine the source of power of any substation except on an hour to hour basis, by examination of the readings on the meters which are read and recorded half-hourly at the major generating plants and hourly at the principal substations.

To determine the source of power of the 65 substations involved for any one hour would take about five manhours by a person experienced in the examination of the readings. Since there are over 31,000 hours in the period inquired of from March 19, 1942 to date, it would require in excess of 155,000 manhours to answer the questions as to the source of power of each of the substations involved. The estimated cost to defendant, if it had the personnel available, would be a minimum of \$285,200.00. Further, any employees of the defendant qualified to do such work could not be released for it, as they have other duties which it is necessary for them to perform, and for which the defendant could not at the present time find other employees.

It is not possible to determine the destination of power [59] leaving each substation at any given time as the customers' meters which are read, some monthly and some bi-monthly, do not differentiate between sources of power, whereas in any one of the substations involved this power may be received during one hour of the day from one, two or all three sources.

16d. Answer to Interrogatory No. 16-d—

If the question means as to whether the various substations at which any of the plaintiffs or plaintiff-intervenors have worked are interconnected, the answer is: The power from the Company's major sources of generation is conducted over high voltage transmission lines to ten principal distributing substations. At two of the ten principal substations, the supply voltage is transmitted to the frequency changers as stated in the preceding answer. At the remaining principal substations, the supply voltage is transformed to a lower transmission voltage, and transmitted over a combination of radial and parallel lines to most of the stations in question, most of which are secondary distributing substations. The stations of Bixby, Fairfax, Redlands, Redondo and Yucaipa are supplied by relatively low voltage transmission or distribution voltage lines radiating from the secondary distributing substations, and perform the same relative function as the secondary distributing substations except transform to a lower distribution voltage. Hanford, a distributing substation of a class similar to Bixby, has no connection with other Company facilities and is supplied by purchased power.

Each such station functions slightly different from the other in that some are fractionally used for switching transmission voltage lines. In general, each of the stations receives power from a generating source by way of transmission lines supplied from intermediate principal distributing substations or secondary substations, transforms power to lower distribution voltage, and distributes it through switches to distribution or low voltage lines which, in turn, [60] carry the power to the consumer or to other lower voltage substations.

16-e. Answer to Interrogatory No. 16-e—

This question cannot be specifically or definitely answered and can be only partially answered.

Defendant objects to making a partial answer on the ground that it would require an unnecessary and unreasonable expenditure of time and money on its part.

The reason that it cannot be specifically answered is that the work of the primary service man is to repair trouble on any of the lines in his district. This repair work consists generally of two classes: (1) Repairs which are made in his normal eight hours of work. As to such work, he is usually furnished with written orders. These are in the Commercial Department. (2) Emergency repairs which he may be called upon to make during either his normal hours of work or during the night time.

During the night time he has no more than a telephone or radio instruction as to the trouble reported by some customer within his district. Normally, records of emergency calls during the daytime are preserved in the Commercial Department. Some of the switching centers in the district have turned in to the Commercial Department their records of emergency calls which have been given to Primary Servicemen by telephone or radio, as stated, and some have not. No record has been preserved of extreme emergencies during either the day or night. To illustrate: During severe storms or emergency conditions trouble reports are made out on sheets of paper and transmitted to the Primary Serviceman by telephone or radio. When he makes the repairs, he checks by telephone or radio with the Switching Center or his superintendent against the sheets, which thereafter are not preserved. The orders on file in the Commercial Department would necessarily permit only an incomplete answer, as they would

not show the numerous emergency repairs made by the Primary Serviceman. [61] Likewise, from an examination of these records, it would often be impossible to state what customers the Primary Serviceman had served, as repair on a line might affect all the customers on that line, and the customers on the line today might not be the same as at the time of the repair.

The best estimate that can be made of the time which it would take to make an answer based upon the records is a minimum of 200 hours, at an estimated cost of \$200.00. This is arrived at upon the estimate that it would take a minimum of 120 manhours to go through the files of the Commercial Department and pull out or segregate the various orders involved, and that if they did not average more than two customers per order, 80 additional manhours would be necessary to check these customers. If more than an average of two customers per order would be involved, the time required would be increased.

16-f. Answer to Interrogatory No. 16-f—

The water tended by Headworks Tender F. E. Griffes generates power at Kaweah No. 1 Hydro Plant. This is a small plant of 2,000 kilowatt capacity. It is not possible to give the names of the customers supplied with electricity generated by this plant since it mixes with power generated at the Kaweah No. 2 and No. 3 Hydro Plants. However, due to local area load requirements, no power generated by Kaweah No. 1 is transmitted outside of Tulare County, California.

16-g. Answer to Interrogatory No. 16-g—

The substations have nothing to do with the generation of electrical energy but they are a part of the defendant's system of transmission and distribution of electrical energy

and, as shown by the preceding answers, are so connected that they each and all are capable of receiving and distributing electrical energy from any of the three principal sources of generation except as noted in defendant's Answer to Interrogatory 16-c. [62]

16-h. Answer to Interrogatory No. 16-h—

Defendant's substations are not interlocked. Many of the substations cannot serve other substations. The Edison system is normally operated with generating sources and 220,000 volt transmission lines in parallel as an interconnected system. The 66,000 volt transmission lines radiating from the principal substations are not operated in parallel with the 66,000 volt lines radiating from another of the principal substations. The low voltage distribution lines from one substation are not operated in parallel with distribution lines from another substation except in special cases. Furthermore, the San Joaquin Valley Area Stations of Porterville, Strathmore, Terra Bella, Tipton, Tulare, Venice Hill, Venida, Visalia, Woodville, Delano, Earlimart, Goshen and Lindsay are operated at 60 cycles while the balance of the system, except as noted, is 50 cycles. As stated in defendant's answer to Interrogatory 16-c, the San Joaquin Valley system is normally mechanically attached to the balance of the system through the shafts of frequency changer sets. When not so attached, the Valley system is supplied by an isolated 220,000 volt line supplied by Big Creek generators which are temporarily operated at 60 cycles. Hanford substation is completely isolated from other Company facilities.

16-i. Answer to Interrogatory No. 16-i—

Defendant interprets the question as seeking information as to whether there is any method of determining by

day and by week the total power generated in California and the total power received from without the state. If this interpretation of the question is correct, the answer is yes.

16-j. Answer to Interrogatory No. 16-j—

Under the condition of ordinary breakdown in the Company's transmission and generating equipment, either in or out of California, [63] automatic equipment isolates the breakdown without affecting the generation of power at any of the Company's generating sources, or its transmission therefrom. If major trouble develops which isolates a major generating station, automatic equipment will cause the other generating sources of the Company to assume the power generated by the generating source which was isolated by breakdown.

16-k. Answer to Interrogatory No. 16-k—

No. Insofar as the major sources of generation by the Company are concerned, it is possible for electric power to go to any load on the system provided it is not backed off by power generated at one of the other generating sources. However, since the minor generating plants of Kaweah, Tule, Kern River, Santa Ana River, Mill Creek, Lytle Creek, San Antonio Creek and Vernon Diesel are of such small capacity, the power generated by these plants is not transmitted out of its local area. The Hanford substation is completely isolated from all sources of generation by the Company's generating plants and is served by power purchased from another utility. Except for Hanford substation, the power which is generated by the three principal sources heretofore named, to-wit: Big Creek, Boulder Dam and Long Beach Steam Plant, may go anywhere in the system except as noted in defendant's answer to Interrogatory No. 16-c.

16-l. Answer to Interrogatory No. 16-l—

The electricity generated at the Company's three principal sources, to-wit: Big Creek, Boulder and Long Beach Steam Plant, are carried on separate 220,000 volt lines which are separate and apart until they meet at Laguna-Bell station. However, as set out in the defendant's answers to preceding interrogatories, the defendant's system is so set up that electrical energy from any one of the three sources may be transmitted to any one of its ten principal distributing substations so that energy may be and often is supplied wholly [64] from one of the three sources to any one of the said ten distributing stations.

16-m. Answer to Interrogatory No. 16-m—

The Company objects to answering the question on the ground it is so indefinite and ambiguous that it is unable to ascertain exactly what is intended to be elicited by the question. The Company believes the information sought to be elicited has been covered by answers to other questions.

17. Answer to Interrogatory No. 17—

Dispatcher Bulletins, Departmental Letter Book, Station Instructions, Accident Prevention Rule Book and Fire Prevention Manual.

18. Answer to Interrogatory No. 18—

The interrogatory can be answered only with reference to current files for the reason that when a dispatcher's bulletin is changed or corrected, the bulletin as originally drawn is not preserved nor a record kept of it. The present file shows that dispatcher's bulletins are on file at all stations as follows:

Emergency Orders—Your Station

Emergency Orders—Adjacent Stations

Switching Center Jurisdiction for all lines and equipment—Your Station

Also, Bulletins Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 21, 25, 26, 102, 105, 111 and 120.

Bulletins Nos. 10, 12, 14, 15, 16, 17, 22, 23, 24, 52, 54, 55, 56, 65, 68, 108, 164, 410 and 511, are not applicable to all stations but are on file at some of the stations.

19. Answer to Interrogatory No. 19—

Defendant objects to answering Interrogatory No. 19 upon [65] the ground that it would require an unreasonable expenditure of time and money upon its part. Defendant estimates that there are 65 substations at which the plaintiffs and plaintiff-interveners may have worked in the period in question. In each substation, a daily log is kept, and to comply with Interrogatory No. 19 it is estimated would take a minimum of 1548 manhours at a minimum cost to defendant of between \$2,000 and \$3,000. This objection is made on the ground stated, and is supported by the affidavit of William M. King, attached hereto. That compliance with the said Interrogatory would require about 1,000 large sheets, approximately 11 by 16 inches, and in affiant's opinion would be so voluminous as to be of little, if any, assistance to either court or counsel.

20. Answer to Interrogatory No. 20—

The Company has not by bulletin, general order, or otherwise, defined any duty of any of its employees as "active duty" or "inactive duty." The terms were employed by the defendant in its answer merely as terms of designation.

(a) The term "active service" was employed by the defendant in its answer to designate those services which each of the said plaintiffs and plaintiff-interveners were employed to perform, the nature or general summary of which is set out in answers 3 (a), 3 (b) and 3 (c).

(b) The term "inactive service" was employed by the defendant in its answer to designate the time in which the said plaintiffs and plaintiff-interveners were performing no service for the defendant, other than being available for service in the manner and to the extent shown in the preceding answers, if and when called upon to perform any active service. [66]

State of California

County of Los Angeles—ss.

R. E. Fife, being first duly sworn, deposes and says:

That he is a citizen and resident of the County of Los Angeles, State of California; that he is the Comptroller of the defendant company and has been such since the 1st day of August, 1945, and prior to that was Executive Assistant to the Vice-President to whom the Comptroller reports; that he is now the Chief Accounting Officer for the defendant, and, as such, has read the answer of the defendant to Interrogatory No. 2 and verifies the same for the defendant; that the said schedules referred to in said answer and filed herewith have been prepared under affiant's direction; that the said facts stated in the said answer and schedules are as shown by the Company's books and records, and are true according to affiant's best knowledge, information and belief.

Further deponent saith not.

R. E. FIFE

Subscribed and sworn to before me this 4th day of December, 1945.

(Seal)

O. W. SCOTT

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires October 6, 1947. [67]

State of California

County of Los Angeles—ss.

E. N. Husher, being first duly sworn, deposes and says:

That he is a citizen and resident of the County of Los Angeles, State of California; that he was employed by defendant in the above entitled action as Superintendent of Distribution from November 1, 1938, to December 31, 1941, as Superintendent of the Alhambra District from January 1, 1941, to May 31, 1941, as Assistant Superintendent of Distribution from June 1, 1941, to January 24, 1945, and as Superintendent of Distribution from January 25, 1945, up to the present time; that he has read the Answers of defendant and verifies Answers to 1 (c), 3 (c), 7 (c), 8 (c), 15 (c) and 20 insofar as 20 applies to plaintiffs and plaintiff-interveners classified as Primary Servicemen, and the objection to interrogatory 16 (e), for the reason that Primary Servicemen were and are under the Distribution Division; and that the facts stated in the above-numbered answers which he verifies for the said company and in the objection to interrogatory 16 (e), are true to his best knowledge, information and belief.

Further deponent saith not.

E. N. HUSHER

Subscribed and sworn to before me this 4th day of December, 1945.

(Seal)

O. W. SCOTT

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires October 6, 1947. [68]

State of California

County of Los Angeles—ss.

William M. King, being first duly sworn, deposes and says:

That he is a citizen and resident of the County of Los Angeles, State of California, and employed by defendant Southern California Edison Company as Superintendent's Office Assistant, Substation Division, Operating Department; that he has read the objections stated to Interrogatory No. 19 and that the same are true to his best knowledge, information and belief; that affiant states that in August or September, 1945, he had conferences with Mr. Moran, Superintendent of Substations, and counsel for defendant as to the feasibility of making digests of all of the logs in the various substations involved in this litigation and that a man, whose name escapes affiant but who was stated to be an economist by counsel for plaintiffs, went over the log books with affiant and affiant discussed with said economist and also with Mr. Sokol, counsel for plaintiffs, the form of said digest; that for the purpose of determining the feasibility of making such digest, affiant has had one experienced man, to-wit: Robert H. Lyon, working under him and examining the log books of about ten substations; that said Lyon has thus far worked an entire month, forty hours per week, and has completed something less than one-tenth of the compilations that would be necessary to comply with Interrogatory No. 19; that based on the actual work involved, exclusive of the time necessary for affiant to give to supervising and directing such work, it would take approximately 1548 man-hours of persons experienced and capable of doing that character of work; that the salary being paid said Lyon at the present time is \$225.00 per month; that affiant esti-

mates that the actual cost of that work, exclusive of the time affiant would have to give to supervise the work, would be approximately \$2,000.00 and [69] it would require another \$500 to \$1,000 for necessary copying or photostating; that this does not include any estimate for the time of affiant in supervising and checking and ascertaining that the compilations are correct; that these estimates are based upon the work that is being carried on at this time, and are made on the assumption that the work will be carried on by one, or not to exceed two men. If a sufficient number of experienced men were put on the work to complete it within a month or so, theoretically the cost would not be increased. Practically, it would, because there are not available the men with experience to do it, and considerable time would have to be taken to break them in, supervise and train them. The compilations so far made indicate to affiant that there is such a similarity between all logs that a few digests of logs can be used as fair samples of all of them; that all logs run about the same so far as the actual facts recorded are concerned, and the principal variation seems to be in the manner of expression by the various persons making the entries. There is some slight variation between logs of two-men and one-man stations, but the logs of two-men stations are substantially similar, and there is not a great deal of difference between the compilation of the logs of the one and two-men stations.

Further, deponent saith not.

WILLIAM M. KING

Subscribed and sworn to before me this 29th day of November, 1945.

(Seal)

MARY S. ALEXANDER

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires July 9, 1948. [70]

State of California

County of Los Angeles—ss.

H. A. Lott, being first duly sworn, deposes and says:

That he is an electrical engineer by profession and has been such since approximately 1921. That he is employed by the defendant company as Operating Engineer, and has been so employed for approximately eight years.

That affiant has read the foregoing answers to interrogatories, and verifies the facts stated in the objections to answer of Interrogatories 16 (a) and 16 (b), and the answers to Interrogatories 16 (c), 16 (d), 16 (g), 16 (h), 16 (i), 16 (j), 16 (k) and 16 (l), and the answer to 16 (f), except that the fact implied in said answer that F. E. Griffes was Headworks Tender at Kaweah No. 1 Hydro Plant was hearsay from G. R. Woodman.

That the facts stated in the answers above numbered which he verifies and the facts stated in the objections to Interrogatories 16 (a) and 16 (b) are true to affiant's best knowledge, information and belief.

That affiant, as an electrical engineer, is unable to ascertain precisely what is meant by Interrogatory No. 16 (m), but believes that it is answered by the preceding answers to interrogatories.

Further deponent saith not.

H. A. LOTT

Subscribed and sworn to before me this 4th day of December, 1945.

(Seal)

O. W. SCOTT

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires October 6, 1947. [71]

State of California

County of Los Angeles—ss.

G. E. Moran; being first duly sworn; deposes and says:

That he is a citizen and resident of the County of Los Angeles, State of California; that he is employed by defendant in the above entitled action as Superintendent of Substations; that he has been such superintendent since January 25, 1945, and prior thereto was Assistant Superintendent of said Substations from January 1, 1941 to January 25, 1945; that he has read the answers of defendant and verifies answers to Interrogatories Nos. 1 (a), 3 (a), 4 (a), 5 (a), 6 (a), 15 (a), 17 (a) and 18 for the reason that they appertain to plaintiffs and plaintiff-interferers classed as substation operators and attendants, and further verifies defendant's answer to Interrogatory No. 20 insofar as it applies to said plaintiffs and plaintiff-interferers classed as substation operators and attendants; that the facts stated in said answers are true according to his best knowledge, information and belief.

Further deponent saith not.

G. E. MORAN

Subscribed and sworn to before me this 4th day of December, 1945:

(Seal)

O. W. SCOTT

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires October 6, 1947. [72]

State of California

County of Los Angeles—ss.

G. R. Woodman, being first duly sworn, deposes and says:

That he is a citizen and resident of the County of Los Angeles, State of California; that he is employed by the

defendant in the above entitled action as Superintendent of Hydro-Generation and has been such for approximately two years; that he has been in the Hydro Division approximately seventeen years; that he has read the answers of defendant and verifies answers to Interrogatories Nos. 1 (b), 3 (b), 4 (b), 5 (b), 6 (b), 9 (b), 10 (b), 11 (b), 12 (b), 13 (b), 14 (b) and 15 (b), by reason of the fact that said answers appertain to the Hydro Station Attendants and Headworks Tenders, all of whom work in the Hydro Division; that he verifies the answer to Interrogatory No. 20 insofar as it appertains to plaintiffs and plaintiff-intervenors classified as Hydro Station Attendants and Headworks Tenders; that affiant further verifies a portion of the answer to Interrogatory No. 16 (f), which states that F. E. Griffes was Headworks Tender at the Company's No. 1 Hydro Plant; that the facts stated in said answers are true according to his best knowledge, information and belief.

Further deponent saith not.

G. R. WOODMAN

Subscribed and sworn to before me this 4th day of December, 1945.

(Seal)

O. W. SCOTT

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires October 6, 1947. [73]

* * * * *

Received copy of the within Answer and Objections to Plaintiffs' Interrogatories this.....day of..... 1945. David Sokol, Attorney for Plaintiffs and Plaintiff-Intervenors.

[Endorsed]: Filed Dec. 5, 1945. Edmund L. Smith, Clerk. [134]

[Title of District Court and Cause]

STIPULATION REQUIRED BY PARAGRAPH (3)
OF ORDER FOR PRETRIAL HEARING

Come now the parties by their respective counsel and, pursuant to Paragraph (3) of the Order for Pretrial Hearing, file the following stipulation:

I.

- (a) A concise statement of the facts involved, as claimed by each party, showing which facts will be admitted by all or any of the parties for the purposes of the suit and which facts each party intends to litigate upon the trial.

The action is by plaintiffs and interveners, hereafter, unless otherwise noted, all referred to as plaintiffs, to recover for overtime compensation and liquidated damages which are alleged severally [135] by the plaintiffs. The answer of the defendant denies that any of the plaintiffs are under the Fair Labor Standards Act (hereinafter referred to for brevity as the "Act" or "statute"), and denies that any of them have performed overtime services for which they have not been fully compensated.

Counsel have filed pretrial briefs and have held numerous conferences. The issues presented by the pleadings as above outlined present numerous questions of law and of fact. The position of the respective parties with reference to these is concisely as follows:

1. (a) Plaintiffs claim that the importation into California and the distribution of power generated by the defendant at Boulder, Arizona (hereafter referred to as "Boulder power"), places defendant in commerce and

brings all of the plaintiffs under the Act. Defendant denies that the distribution of Boulder power is an act in interstate commerce or places any employee of the defendant whose work is necessary to such distribution under the Act. It concedes that if the Court holds that the distribution of Boulder power is an act in interstate commerce that then, all of the plaintiffs who are primary servicemen or substation operators and attendants, other than those in the San Joaquin Valley, would be under the Act.

(b) Defendant takes the position that no Boulder power reaches the San Joaquin Valley, but when Boulder power flows toward San Joaquin, it operates a frequency changer, that is to say, it operates a motor which, in turn, operates a generator, which generates electrical energy at sixty cycles, Boulder and other electrical energy of defendant being principally distributed through Southern California at fifty cycles. Contrary to plaintiffs, defendant contends that the electrical energy flowing from the frequency changer is not to be considered as Boulder power.

2. (a) Plaintiffs contend that the distribution of electrical energy by the defendant to concerns in commerce places the employees necessary to such distribution under the Act. Defendant denies this [136] and claims that the distribution of electrical energy to concerns in commerce, or using it for commerce, does not place the employees of defendant necessary to such distribution in commerce.

(b) The defendant concedes that if the Court holds otherwise, that all of the plaintiff primary servicemen and substation operators and attendants would be under the Act who could show power was distributed over the

lines they serviced or through the substations at which they were stationed to concerns using it for commerce. Also, that all of the plaintiffs in the Hydro Division would be under the Act who could show that the electrical energy, to the generation of which they work contributed, was distributed to concerns using the same in interstate commerce. In this connection, defendant contends that the electrical energy generated at its Kaweah generating plants ordinarily does not flow out of the San Joaquin Valley. Defendant concedes that any of the plaintiff hydro employees who were connected with its Big Creek plant would be under the Act if the Court holds that the distribution of electrical energy to concerns using it for commerce places employees necessary to such distribution under the Act.

3. (a) Plaintiffs claim that the distribution of electrical energy to concerns using the same for the production of goods for commerce, hereafter for brevity referred to as the "production of goods," places the employees necessary to such distribution under the Act. Defendant denies this, and contends that such employees of defendant are too far removed from the production of goods or work necessary for production, to bring them under the Act.

(b) If the Court holds to the contrary, defendant makes precisely the same concessions with reference to the plaintiffs who would be under the Act as made above with reference to the distribution of electrical energy for use in commerce, except that the distribution to be shown would be for the production of goods.

4. Defendant, in preparing its pretrial brief and agreeing to [137] this statement, has excluded from its consideration the interveners named in the stipulation filed sub-

sequent to the filing of defendant's pretrial brief. It reserves the right to plead that some of the interveners included in such stipulation fall within the exemptions to the Act, as executives.

5. Applicable Statute of Limitations

The pleadings present an issue as to the applicable statute of limitations. Defendant does not claim the action is barred, but pleads the various sections of the Code of Civil Procedure with reference to the limitation of actions as limiting the time within which recovery can be allowed if the Court finds any of the plaintiffs are entitled to recover. The pleas present the following questions:

- (1) Is the allowance of liquidated damages governed by Section 340 of the Code of Civil Procedure?
- (2) Is the recovery of overtime compensation, if any, and liquidated damages (if the Court holds that liquidated damages are not governed by Section 340 C. C. P.) governed by Section 338 or Section 339 of the Code of Civil Procedure?

(3) Constitutional questions involved

(a) Defendant, by its answer, challenges the constitutionality of the Act in so far as prescribing liquidated damages is concerned, as taking defendant's property without due process of law.

In its trial brief, defendant states that it calls the attention of the Court to this issue, but does not discuss it further than to advise the Court that it does not waive it.

(b) Defendant does contend that in any and all events, no sums can be awarded either for overtime or liquidated damages for the sixth day during which the

respective plaintiffs were required to work under governmental order during the period of critical labor shortage, as decreed by the War Manpower Commission, and contends that for the reasons stated in its pretrial brief, to award either overtime or [138] liquidated damages for such sixth day would be the taking of its property without due process of law.

- (4) Issues of fact in the event the Court holds that any of the plaintiffs are under the Act

Generally speaking, the plaintiffs are subdivided into three classes:

- (a) Substation operators and attendants.
- (b) Primary servicemen.
- (c) Employees in the Hydro Division, referred to as Hydro employees.
- (a) Substation operators and attendants:

It is the contention of the plaintiffs that these employees were required as a condition of employment to live upon defendant's property and not leave for twenty-four hours a day for five days a week, except during the time that Southern California was declared by the War Manpower Commission to be a critical labor shortage area (hereafter for brevity referred to as "critical labor shortage"), when they were required to remain on the premises for twenty-four hours a day for six days a week. Each of said plaintiffs was paid a monthly salary. Plaintiffs contend that the salary paid them was for eight hours per day, forty hours per week, each work week during the month and that the time worked in excess thereof, under the Act, must be compensated for at time and half plus an equal amount as liquidated damages.

Defendant contends:

1—That while they had no regularly scheduled hours, the active services did not consume more than two to five hours per day; that the normal active and inactive services were the equivalent of a job of eight hours of active service and that the parties impliedly agreed so to regard the employment; that there is, therefore, nothing due to any of said plaintiffs.

2—That the monthly salary paid to plaintiffs covered all [139] services performed, active or inactive, whether denominated waiting or standby time, or otherwise, except emergency callouts during nighttime hours for which overtime was paid, so that if the Court finds there is any overtime due to any of said plaintiffs, it can allow them only half of the basic hourly rate as determined by the Court, plus an equal amount for liquidated damages.

(b) Hydro Employees

Employees of the Hydro Division perform a different character of work than substation operators and attendants, but the respective parties make substantially the same claims as set out with reference to the substation operators and attendants, except defendant claims the requirements as to the employees remaining upon the Company's property were somewhat different.

(c) Primary Servicemen

Plaintiff contends that the primary servicemen were employed on a monthly salary for eight hours per day, five days per week, forty hours in each work week during the month, except during the critical labor shortage when six days were required. The primary servicemen contend

that as a condition of employment they were required after the end of their regular eight-hour shift to remain on call waiting for trouble or other messages from their supervisors and the switching centers, during which time they were required to remain at home; that in addition, in certain instances, the company maintained the regular company telephone at the primary servicemen's home, which telephone was listed in the telephone directory as that of the defendant and such plaintiff primary servicemen were required to answer the said telephone after their regular work day. Plaintiff primary servicemen contend that the time so spent at the direction of the company after the regular work day was work time and that they are entitled to be compensated therefor under the Act.

Defendant contends that each of the primary servicemen were employed on a monthly salary for eight hours per day for five days [140] per week except during the critical labor shortage when it was six. At the end of his eight hour shift he was free to do whatever he pleased and go wherever he pleased, the only requirement being that if he left his residence, he advise the substation or switching center where he could be reached by telephone in case of an emergency requiring his service. Defendant contends that this did not constitute any employment restraint or entitle any of the said primary servicemen to have any of the time after their eight hour shift regarded as waiting or standby time. The same issues and contentions are made as to salary covering all services whether active or inactive that exist between the parties with reference to the other two classes of employees.

II.

- (b) List of all documents exhibited by each party at the meeting or meetings held pursuant to (2) above, with a description of each document sufficient for identification and a statement of all admissions by and all issues between any of the parties as to the genuineness thereof, as to due execution thereof, and as to the truth of relevant matters of fact set forth therein.

Thus far, plaintiffs have exhibited no documents to the defendant. Defendant, however, has exhibited to counsel for plaintiffs:

(1) The log-books of the substations involved, and has offered and advised counsel that he could examine any of said log-books at any convenient time and place desired.

(2) The log-books of the hydro employee plaintiffs.

(3) Time sheets of the hydro employees and primary servicemen plaintiffs. [141]

(4) Recapitulation, thirteen in number, of certain substation log-books and has furnished copies thereof to counsel for plaintiffs. Plaintiff has requested recapitulations of additional logs of the plaintiffs, and defendant proposes between now and the time of trial to make additional recapitulations of other logs.

(5) The time-cards and timesheet reports of each of the substation operators and attendants and a sample of summary which defendant proposes to make and introduce at the trial of each and all of said records which defendant claims will show the number of times each of said plaintiffs was called out to perform any emergency services during the period denominated in defendant's answer as "nighttime hours."

(6) In addition thereto, defendant has exhibited to and delivered a copy to counsel for plaintiffs of a booklet containing certain bulletins and operating orders comprising:

- 1—Operating Order No. 1, as revised January 1, 1942.
- 2—Same Order, as revised January 1, 1943.
- 3—Operating Order No. 2, as revised May 1, 1941.
- 4—Same Order as revised May 1, 1943.
- 5—Substation Order A-36, as revised January 1, 1942.
- 6—Same Order as revised January 1, 1943.
- 7—Letter of B. M. Cavner, Superintendent of Substations, dated April 17, 1943, with reference to said Order A-36.
- 8—Hydro Generating Order No. 22 as revised January 1, 1942.
- 9—Same Order as revised January 1, 1943.

Counsel for the respective parties have agreed, subject to the approval of the court, to reserve the right prior to the trial of exhibiting to counsel for the other party any other document, bulletin, order, or other character of writing, which further study of the case indicates to counsel may be desirable to be introduced at the trial.

Defendant has advised counsel for plaintiffs that it in- [142] tends to make a summary of all of the time records of the substation operators and attendants similar to the one exhibited to counsel for plaintiffs, and to introduce the same at the trial. Counsel for defendant have also advised counsel for the plaintiffs that defendant intends to make a similar summary of the time records of the hydro employee plaintiffs and also the primary servicemen, if it is able to do so before the time of trial and

deliver copies thereof to plaintiffs' counsel and to introduce the same at the trial.

The statement of the respective parties has been made with reference to the plaintiffs and interveners who were parties to the action prior to the filing of the pretrial briefs of the respective parties. Subsequent to the filing of defendant's pretrial brief, a stipulation has been filed adding additional interveners. Counsel for defendant have advised counsel for plaintiffs that they may take the position as to at least one of said interveners, that he is under the express exemptions of the Act, but at present defendants have not sufficient information thereon to take a definite position.

(7) An estimate of the length of time of trial is extremely difficult, but the best estimate which counsel for the parties can make after discussion is that the trial will take from one to three weeks.

Dated: Los Angeles, California, April 29, 1946.

DAVID SOKOL

Attorney for Plaintiffs and Intervenors

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California
Edison Company, Ltd.

[Endorsed]: Filed Apr. 30, 1946. Edmund L. Smith,
Clerk. [143]

[Title of District Court and Cause]

STIPULATION

The following facts are hereby stipulated to by and between the respective parties, through their respective attorneys:

1. The defendant does not furnish any electrical energy to any person, firm, or corporation operating within the city limits of Los Angeles other than the Los Angeles Transit Lines and the Pacific Electric Railway Company, electrical energy to all other concerns using such energy within the said city limits being furnished by the Department of Water and Power of the City of Los Angeles. Electrical energy is both bought from and sold to the Department of Water and Power of the City of Los Angeles by the defendant. [144]

2. Also, the defendant does not furnish electrical energy to any person, firm, or corporation operating within the city limits of the cities of Burbank, Glendale or Pasadena, except to the Pacific Electric Railway Company.

3. Outside of the cities of Los Angeles, Burbank, Glendale and Pasadena, the defendant has, during the period since March 22, 1942, to date, supplied electrical energy within Southern California to the following types of consumers:

- (1) Western Union Telegraph Company.
- (2) Various telephone exchanges.
- (3) Radio stations.
- (4) The Atchison, Topeka, & Santa Fe Railway Company.
- (5) Union Pacific Railroad Company.

- (6) Southern Pacific Company.
- (7) Los Angeles Transit Lines and Pacific Electric Railway Company.
- (8) Airports.
- (9) Newspapers (but not any of the newspapers published in the City of Los Angeles).
- (10) Depots for bus lines.
- (11) Army and Navy camps.
- (12) Governmental agencies.
- (13) Municipalities.
- (14) Various oil companies.
- (15) Various motion picture companies.
- (16) Fruit packing plants.
- (17) Industrial concerns of various types.

4. The railroads use the electrical energy which defendant has furnished them for lighting their stations, for operating machine shops, and to light and operate various signal devices. The parties are not advised and do not stipulate as to whether the railroads, except for lighting their stations and machine shops, use the current [145] directly which they receive from the defendant for any of the purposes above stipulated, or whether the voltage or frequency is changed or whether the electrical energy received from the defendant by the railroads is used to operate motors or other equipment that generate current which is used for the purposes above stipulated. All of the defendant's electrical energy is furnished to its customers in an alternating current. The Los Angeles Transit Lines and Pacific Electric Railway Company, in addition to the above, uses stipulated to, use the electrical energy furnished them in an alternating current by various methods to operate equipment which produces a direct

current which is used by said companies to operate their cars and trains.

5. Army and navy camps use the electrical energy to light the camps and other miscellaneous uses connected with housing personnel.

6. The Western Union and Telephone Exchanges use the electrical energy for general office use and also transform the electrical energy furnished it and after transforming the same use the current for the transmission of messages, and also for the charging of storage batteries also used for the said purpose.

7. At the time of entering into this stipulation, the defendant is not advised that any of the commercial airports to which it furnishes electrical energy are used by planes making interstate flights, but it is stipulated that the defendant furnishes electrical energy for lighting some emergency airfields that may be used by any type of plane, and also furnishes electrical energy to army, navy, and marine airfields, the planes of which frequently fly across state lines.

8. The radio broadcasting stations use the electrical energy furnished by defendant for general office purposes, but do not directly use the electrical energy furnished said stations for broadcasting, but use it for the operation of motors which, in turn, generate electrical energy which, after passing through several different [146] electrical tubes and other devices, is used for the purpose of broadcasting.

9. Defendant also furnishes to the United States Government electrical energy to operate a chain of beacon signals for airplanes, some of which guide planes engaged in intrastate and interstate flights.

10. The newspapers use the electrical energy furnished by defendant for general office purposes, and to operate their presses either as received from the defendant directly, or to operate motors or transformers which generate energy at different current voltage or frequency which, in turn, operate the presses, but defendant does stipulate they use it in one or the other method.

11. The oil companies use the electrical energy furnished them for lighting their stations or refineries, and some use it in the field for drilling and operating oil wells.

12. Motion picture studios use the electrical energy furnished them for general lighting, which includes set lighting, but for the taking of pictures they use the electrical energy furnished by defendant to operate conversion equipment, which produces current that is used in operating cameras and sound tracks.

13. The fruit packing plants use the electrical energy which the defendant furnishes them for lighting their plants, for operating machinery and equipment, and for the packing and processing of fruits and agricultural products sold in intra and interstate commerce. The parties do not stipulate as to whether the said electrical energy used by any packing plant or establishment for the operation of machinery and equipment is used directly for the operation thereof, or for the operation of conversion equipment, or transformers. The parties stipulate that some of the fruit packing plants herein mentioned are cooperatives. Defendant will not stipulate that any of them are not cooperatives. Plaintiffs will not stipulate that all of them are cooperatives. [147]

14. In addition to the foregoing, the defendant supplies power to numerous industrial concerns in Southern Cali-

fornia which use such power for the lighting of their establishments and for the operation of machinery and equipment used in the manufacturing and processing of goods, but the parties do not stipulate as to the manner in which any one industrial concern operates its machinery or equipment, that is to say, some of the concerns use the electrical energy furnished them by defendant directly in the production and processing of goods; others use it either for operating transformers or conversion equipment, using the electricity produced by the transformers or conversion equipment for the production and processing of goods.

15. The parties further stipulate that the foregoing stipulation shall not limit the parties in introducing upon the trial hereof further and additional evidence respecting the matters herein set forth, or in explanation of any of the terms herein employed.

Dated: Los Angeles, California, May 2nd 1946.

DAVID SOKOL

Attorney for Plaintiffs and Interveners

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California
Edison Company, Ltd.

[Endorsed]: Filed May 3, 1946. Edmund L. Smith,
Clerk. [148]

[Title of District Court and Cause]

REQUEST FOR ADMISSION OF FACTS UNDER
RULE 36 OF THE FEDERAL RULES OF
CIVIL PROCEDURE

To the Defendant and Its Counsel:

Please Take Notice that pursuant to Rule 36 of the Federal Rules of Civil Procedure, you are requested to admit, within 15 days after service upon you of this demand, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, the following:

1. That the plaintiffs and intervenors in the above entitled action were at all times engaged in work and processes necessary to the production of goods in interstate commerce.

2. That the plaintiffs and intervenors were at all times engaged in work necessary to the transmission of electric power and energy in interstate commerce.

3. That plaintiffs and intervenors substation relief operators were required by defendant to relieve substation operators on days off, vacations and in emergencies. [149]

4. That the plaintiffs and intervenors substation relief operators were required by defendant to live at the substation where they were relieving, and remain on duty for 24 hours each day while relieving substation operators.

5. That plaintiffs and intervenors substation relief operators lived in special relief quarters furnished by the defendant.

6. That the plaintiffs and intervenors were required by the defendant to record on weekly time sheets only 8 hours per day normal working time.

7. That the plaintiffs and intervenors were permitted to enter on their weekly time sheets additional time worked only in emergencies.

8. That the plaintiffs and intervenors were not compensated for time worked except for the time actually recorded on the weekly time sheet.

Dated, Los Angeles, May 15, 1947.

DAVID SOKOL

Attorney for Plaintiffs and Intervenors.

[Affidavit of service by mail.]

[Endorsed]: Filed May 16, 1947. Edmund L. Smith, Clerk. [151]

[Title of District Court and Cause]

MOTION TO DISMISS and POINTS AND AUTHORITIES IN SUPPORT THEREOF

Comes now the defendant, Southern California Edison Company, Ltd., and with leave of Court first had and obtained, because of the enactment of the Portal to Portal Act of 1947 subsequent to the joining of issue in the above-entitled matter, moves this Court to dismiss the above-entitled action, upon the grounds:

One. That this Court has now no jurisdiction of the subject matter of the action and has not had jurisdiction of the subject matter of the action since the effective date of the said Portal to Portal Act of 1947;

Two. That the second amended complaint fails to state a claim upon which relief can be granted and has failed to state such a claim since the effective date of the said [152] Portal-to-Portal Act of 1947.

Said motion will be made upon all the files and papers in said cause and upon the Points and Authorities filed in support of said motion, copy of which is attached and served herewith.

Dated, Los Angeles, California, June 26, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry,

Attorneys for Defendant, Southern California
Edison Company, Ltd.

[Endorsed]: Filed Jun. 26, 1947. Edmund L. Smith,
Clerk. [153]

[Title of District Court and Cause]

NOTICE OF HEARING ON DEFENDANT'S
MOTION TO DISMISS

To the Plaintiffs in the action above entitled, and to David Sokol, Esq., their attorney:

You, and Each of You, Will Please Take Notice that the undersigned attorneys for the defendant, Southern California Edison Company, Ltd., will bring on for hearing said defendant's Motion to Dismiss, dated June 26th, 1947, and served and filed herewith, before the Honorable William C. Mathes in his Courtroom in the Federal Post Office and Court House Building in the City of Los Angeles, State of California, on Friday, the 11th day of July, 1947, at the hour of 10:00 o'clock A.M., on said date, [154] or as soon thereafter as counsel can be heard.

Dated: Los Angeles, California, June 26th, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California
Edison Company, Ltd.

Received copy of the within Motion to Dismiss with Points and Authorities in support thereof, and Notice of Hearing of Motion, this 26th day of June, 1947. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Jun. 26, 1947. Edmund L. Smith,
Clerk. [156]

[Title of District Court and Cause]

DEFENDANT'S RESPONSE TO REQUEST FOR
ADMISSION OF FACTS UNDER RULE 36 OF
THE RULES OF CIVIL PROCEDURE

The plaintiffs having duly served upon the defendant under Rule 36 of the Federal Rules of Civil Procedure, Request for Admission of Facts, and the defendant having subsequent thereto filed a Motion to Dismiss the cause upon the ground that the Court now has no jurisdiction of the subject matter of the action, and has not had jurisdiction thereof since the effective date of the Portal-to-Portal Act of 1947, and that the Second Amended Complaint does not state a claim upon which relief can be granted and has not stated such claim since the effective date of said Portal-to-Portal [157] Act, and said Motion being set for hearing on the 11th day of July, 1947, and the time within which the defendant is required to respond to said Request, in the event the Court should deny said Motion, expiring on the 1st day of July, 1947, and the defendant in the event,—which it does not anticipate,—of the Court denying its said Motion to Dismiss, not desiring to admit any Request for Admission except as hereinafter stated in the responses thereto, files this, its Responses to the said several Requests for Admission. In doing so, defendant does not waive, but insists upon its Motion to Dismiss upon each and both of said grounds.

I.

Defendant's Response to the First Requested Admission of Fact:

Defendant cannot admit or deny categorically the requested admission, for the reasons that it embraces conclusions of law and factual information as to the activities of consumers which the defendant does not now have.

Defendant admits that all of the plaintiffs and intervenors at all times involved in the litigation were engaged in work necessary for the distribution of its electrical energy to its customers. Defendant further admits that some of its customers were engaged in the production of goods for interstate commerce, and that some of such customers used the electricity furnished in the production of such goods.

II.

Defendant's Response to the Second Requested Admission of Fact:

Defendant denies the requested admission. In this connection, the defendant admits that electrical energy is transmitted to it from Nevada and that such energy is "stepped down" in voltage at its major transmission substations, and after its voltage has [158] been stepped down or altered, it is mingled with its electrical energy obtained from other sources within the State of California and distributed to defendant's customers throughout California. Defendant denies that any of the plaintiffs or intervenors were employed at any of such major transmission substations or in the maintenance or operation of any transmission lines from Nevada thereto.

III.

Defendant's Response to the Third Requested Admission of Fact:

Defendant admits that plaintiffs and intervenors, substation relief operators, were employed by the defendant to relieve substation operators on days off, vacations, and during certain other periods when the substation operator was absent from the job because of sickness or other personal reasons. The defendant cannot ascertain from the form of the requested admission whether anything

further than this is contained or implied in the requested admission. If it is, the defendant denies any such further fact or implication.

IV.

Defendant's Response to the Fourth Requested Admission of Fact:

(1) Defendant denies that such relief operators were required to live at the substation, and admits that when relieving a substation operator and attendant the relief operator was required to live in the quarters furnished him by defendant and to remain on or adjacent to the defendant's property during the entire relief period.

(2) Defendant denies that the relief operator was on duty for twenty-four hours a day, and alleges that he would not be on [159] duty except in cases of emergency for more than two to five hours per day.

V.

Defendant's Response to the Fifth Requested Admission of Fact:

Defendant admits the facts requested to be admitted in the fifth requested admission.

VI.

Defendant's Response to the Sixth Requested Admission of Fact:

Defendant denies the facts requested to be admitted by the sixth request for admission.

In this connection, the defendant states:

(1) That the plaintiffs and intervenors who were primary service men worked on an eight-hour shift for five days a week except during the period of time which is set out in the Answer when they were required to work six

days a week because Southern California was on a 48-hour work week; that the said primary service men were required and expected to record any and all time which they worked, and that they were paid not less than time and a half for any and all services performed by them in excess of 40 hours per week, which included the sixth day that they worked an eight-hour shift.

(2) That the said plaintiffs and intervenors who were substation operators and attendants made out their own time cards, as alleged in defendant's Answer. That any active duties or services required of them could be performed in from two to five hours a day, and except for certain designated times for calling their switching center and making inspections of the substation, they could perform their services at any time they saw fit, and when not [160] engaged in the active duties required of them, were free to engage in any activities they desired to and which could be performed on defendant's premises. That such plaintiffs and intervenors had no regularly scheduled hours of work; that under the system of payroll accounting applicable to such plaintiffs and intervenors, each made out his own time cards (daily and weekly) from which the monthly time cards of the Company were posted, that such time cards reflected as overtime all call-outs during the night-time hours, as set forth in defendant's answer, which were posted by such employees and for which they were paid at overtime rates of not less than time and a half. Exclusive of such overtime reflected on the time cards, the plaintiffs recorded eight hours for each day worked, notwithstanding the fact that they consumed from only two to five hours per day on the average in active duties during such days. This method of reporting was done with the consent of the defendant and is one of the facts relied on by the defendant in support of its contention that as

to such plaintiffs and intervenors as were substation operators and attendants, the defendant and plaintiffs and intervenors regarded their employment as the equivalent of a job of eight hours of active service.

(3) All of the foregoing facts with reference to the substation operators and attendants apply equally to the substation relief operators and to the plaintiffs in defendant's Hydro Division.

VII.

Defendant's Response to the Seventh Requested Admission of Fact:

Defendant denies the facts requested to be admitted in the seventh requested admission. [161]

VIII.

Defendant's Response to the Eighth Requested Admission of Fact:

In answer to the eighth requested admission, the defendant admits that the plaintiffs and intervenors were all paid and compensated for all time worked and for all overtime, as shown by the time cards prepared by the said plaintiffs and intervenors, and further admits that the method of payment and the method of recording time worked is as set forth in the defendant's answer to the Amended Complaint and as set forth in the defendant's answer to the sixth request for admission. The defendant denies that the plaintiffs and intervenors were not fully compensated for all time in fact worked by them. The defendant cannot ascertain from the form of the requested admission whether anything further is contained or im-

plied in the requested admission; if it is, the defendant denies any such further fact or implication.

Dated: Los Angeles, California, June 30, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd. [162]

[Verified.] [163]

Received copy of the within Responses to Request for Admission of Facts this 30th day of June 1947. David Sokol, by F. A. LaBelle, Attorney for Plaintiffs.

[Endorsed]: Filed Jun. 30, 1947. Edmund L. Smith, Clerk. [164]

[Title of District Court and Cause]

ORDER

The motion of the defendant to dismiss the above entitled action upon the grounds:

(1) That this court has now no jurisdiction of the subject matter of the action, and has not had jurisdiction of the subject matter of the action since the effective date of the Portal-to-Portal Act of 1947, and

(2) That the second amended complaint fails to state a claim upon which relief can be granted and has failed to state such claim since the effective date of the said Portal-to-Portal Act of 1947,

came on regularly to be heard before the Honorable William C. Mathes, Judge Presiding. [165]

Plaintiffs appeared by David Sokol, Esquire, their attorney, and the defendant by Norman S. Sterry, Esquire, and Rollin E. Woodbury, Esquire, its attorneys, and the said motion was duly argued and submitted to the court, and the court being fully advised in the premises, and it appearing that the second amended complaint does not now, and has not since the effective date of the Portal-to-Portal Act of 1947, set forth "a short and plain statement of the grounds upon which the court's jurisdiction depends" as required by Rule 8(a)(1) of the Federal Rules of Civil Procedure, and it further appearing that defendant may now, pursuant to Rule 12(g) of the Federal Rules of Civil Procedure, raise this question by motion to dismiss since the objection and defense was not available to defendant at the time of hearing of defendant's motion heretofore made and determined herein,

Now, Therefore, It Is Ordered:

(1) That defendant's motion to dismiss be and it is hereby granted with leave to plaintiffs to file a third amended complaint or an amendment to the second amended complaint on or before August 15, 1947, if so advised.

(2) At the request of plaintiffs' counsel, plaintiffs are given leave to file a motion for summary judgment, together with a memorandum of their points and authorities in support thereof and the statement required by local rule 3(d)(2), at any time on or before August 15, 1947.

(3) Counsel for plaintiffs having indicated that he expects to file a motion for summary judgment, and counsel for the defendant that they will probably file a motion with reference to any amended complaint, or any amendment to the second amended complaint, the court has

noted the above cause upon its calendar Monday, September 22, 1947, for the purpose of hearing motions which may be filed by either of the [166] parties, and directs that all motions addressed to the state of the pleadings, or for summary judgment, be noticed for hearing on September 22, 1947, at the hour of 10:00 A.M.

(4) That if, on or before August 15, 1947, the plaintiffs shall file an amended complaint or an amendment to the second amended complaint, or any motion for summary judgment, the defendant shall have until and including September 15, 1947, within which to file any motions addressed to the third amended complaint or any amendment to the second amended complaint, together with defendants reply by affidavits, pleading, or points and authorities, to any motion of plaintiffs for summary judgment.

(5) That plaintiffs shall have until and including September 20, 1947, within which to file any reply by way of counter-affidavits or points and authorities.

(6) It Is Further Ordered that the order setting this cause for trial on November 11, 1947, be and is hereby vacated, and the cause is now set for trial at 10:00 A.M. on February 3, 1948, with the cause with which it is now consolidated for trial, to wit, Raymond F. Drake, et al., plaintiffs, v. Southern California Edison Company, Ltd., a corporation, defendant, numbered in this court Civil No. 5544-WM.

Done in Open Court July 11, 1947.

WM. C. Mathes

United States District Judge

[Endorsed]: Filed Jul. 25, 1947. Edmund L. Smith,
Clerk. [167]

In the District Court of the United States for the
Southern District of California

Central Division

Civil Action No. 4327-WM

MYRON E. GLENN, HOWARD L. ANDERSEN,
ANDY G. AUSTIN, C. C. BLENIS, HAROLD
A. BOYNTON, W. B. BURTON, E. K. DICKER-
SON, FLOYD E. DOWNS, MERLE EDGER-
TON, EUGENE L. ELLINGFORD, C. R. FRA-
ZIER, LAWRENCE G. HAGERMAN, P. G.
HANLON, WILLIAM E. HOGG, OATHY G.
HORNE, W. S. HOSTETLER, L. F. HUDSON,
FRANK JOHNSON, PAUL L. LOWERY, VER-
NER NEHER, THOMAS E. OSBORNE, MAR-
ION S. POSTON, M. E. ROACH, G. W. STARK,
E. N. SWEITZER, ARCHIE TREGONING,
ROBERT C. GREEN, F. E. McCLANAHAN,
F. D. SCHWALBE, HARLAN E. MAYES,
ARTHUR E. FONTAINE, LAWRENCE E.
JACKSON, RICHARD W. RODENBECK, RU-
DOLPH C. GREINER, H. J. KREKELER, C. E.
FOSTER, J. A. HENLE, L. W. HENNIG, HER-
BERT S. KANEEN, EDWARD M. KIRSTE,
SIDNEY F. LAFOND, GEORGE F. LARSEN,
L. S. MORGAN, BENJAMIN E. MOSES, J. W.
McKERNAN, CHARLES S. MYRENIUS, AR-
THUR L. NEFF, JAMES C. SCHRADER,
HAROLD A. TRUNNELL, V. V. B. WERT, J. J.
BRYAN, E. G. EGGERS, F. E. GRIFFES, G. H.
BARTHOLOMEW, MERLE BARTHOLOMEW,
LOYD H. BELL, MONROE H. HUNTINGTON,
ROYE B. JOHNSON, FRED C. RAY, C.
ROGERS, GEORGE C. WOOLBRIDGE, PAUL

W. COCKRELL, J. D. BORDEN, JOHN M.
SMITH, W. H. CULBERTSON, A. L. HON-
NELL, L. A. PHINNEY, CLARENCE C.
PRINSLOW,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON CO., LTD.,
now known as SOUTHERN CALIFORNIA EDI-
SON COMPANY,

Defendants.

THIRD AMENDED COMPLAINT UNDER THE
FAIR LABOR STANDARDS ACT OF 1938
AND THE PORTAL-TO-PORTAL ACT OF
1947 [168]

First Cause of Action

Plaintiffs, by way of Third Amended Complaint, allege
as follows:

I.

Plaintiffs bring this action against defendant under and
by virtue of an Act of Congress of the United States of
America entitled, "The Fair Labor Standards Act of
1938" (Act of June 25, 1938, C. 678, 58 Stat. 1080;
U. S. C., Title 29, Section 201 et seq.), and the Portal-to-
Portal Act of 1947, hereinafter called the Acts. Juris-
diction is conferred upon the Court by said Acts.

II.

The defendant Southern California Edison Co., Ltd.,
was at all times herein mentioned a corporation organized
and existing under and by virtue of the laws of the State
of California, having its principal office and place of busi-
ness in the City and County of Los Angeles, State of

California. That on May 6, 1947, said defendant, Southern California Edison Co., Ltd., changed its corporate name to Southern California Edison Company. That at all the times herein mentioned, said defendant was and now is engaged in the generation, distribution and sale of electric power. That during all of the times herein mentioned, the defendant distributed and sold electric power within the State of California, which was generated at Boulder Dam, Arizona. Defendant, at all times herein mentioned, distributed, sold and delivered electric power generated by it to railroads, army and navy camps, Western Union and Telegraph Agencies, commercial airports, radio broadcasting stations, newspapers, oil producing companies, motion picture producers, fruit packing plants, and to numerous other industrial concerns which used such electric power for the lighting of their establishments and for the operation of machinery and equipment necessary to the transportation, transmittal, manufacturing, processing and production of goods for interstate commerce.

III.

That the defendant employed the plaintiffs named in the caption of this action in processes and occupations necessary to the generation, distribution and sale of the aforesaid electric power by defendant in interstate commerce, and in processes and occupations necessary to the production, distribution and sale of goods in interstate commerce by the customers of defendant. That the plaintiffs during the period covered hereby were employed by defendant in the following capacities:

Name	Capacity
Howard L. Andersen	Substation Attendant and Relief Operator (Substation)
Andy G. Austin	Substation Attendant
C. C. Blenis	Substation Attendant
Harold A. Boynton	Substation Attendant
W. D. Burton	Substation Attendant
E. K. Dickerson	Substation Attendant
Floyd E. Downs	Substation Attendant and Relief Operator (Substation)
Merle Edgerton	Substation Attendant
Eugene L. Ellingford	Substation Attendant
C. R. Frazier	Substation Attendant
Myron E. Glenn	Substation Attendant
Lawrence G. Hagerman	Substation Attendant and Hydro Station Attendant
P. G. Hanlon	Substation Attendant and Substation Relief Operator
William E. Hogg	Substation Attendant and Substation Relief Operator
Oathy G. Horne	Substation Attendant
W. S. Hostetler	Substation Attendant
L. F. Hudson	Substation Attendant [170]
Frank Johnson (now deceased)	Substation Attendant
Paul L. Lowery	Substation Attendant and Substation Relief Operator
Verner Neher	Substation Attendant and Substation Relief Operator
Thomas E. Osborne	Substation Attendant and Substation Relief Operator
Marion S. Poston	Substation Attendant

Name	Capacity
M. E. Roach	Substation Attendant and Hydro Plant Operator
G. W. Stark	Substation Attendant
E. N. Sweitzer	Substation Attendant
Archie Tregoning	Substation Attendant
Robert C. Green	Substation Attendant
F. E. McClanahan	Substation Attendant
F. D. Schwalbe	Substation Attendant
Harlan E. Mayes	Substation Attendant and Substation Relief Operator
Arthur E. Fontaine	Substation Attendant and Substation Relief Operator
Lawrence E. Jackson	Substation Attendant
Richard W. Rodenbeck	Substation Attendant and Substation Relief Operator
Rudolph C. Greiner	Substation Attendant and Substation Relief Operator
H. J. Krekeler	Substation Attendant and Substation Relief Operator
C. E. Foster	Substation Attendant
J. A. Henle	Substation Attendant
L. W. Hennig	Substation Attendant and Substation Relief Operator [171]
Herbert S. Kaneen	Substation Attendant
Edward M. Kirste	Substation Attendant and Substation Relief Operator
Sidney F. LaFond	Substation Attendant
George F. Larsen	Substation Attendant
L. S. Morgan	Substation Attendant and Substation Relief Operator
Benjamin E. Moses	Substation Attendant and Substation Relief Operator

Name	Capacity
J. W. McKernan	Substation Attendant
Charles S. Myrenius	Substation Attendant
Arthur L. Neff	Substation Attendant
James C. Schrader	Substation Attendant
Harold A. Trunnell	Substation Attendant
V. V. B. Wert	Substation Attendant
J. J. Bryan	Hydro Station Attendant
E. G. Eggers	Head Works Tender
F. E. Griffes	Hydro Station Attendant
G. H. Bartholomew	Head Works Tender
Merle Bartholomew	Hydro Station Attendant
Lloyd H. Bell	Hydro Station Attendant
Monroe H. Huntington	Hydro Station Attendant
Roye B. Johnson	Hydro Station Attendant
Fred C. Ray	Head Works Tender
C. Rogers	Hydro Station Attendant
George C. Wooldridge	Head Works Tender
Paul W. Cockrell	Primary Serviceman
J. D. Borden	Primary Serviceman
John H. Smith	Primary Serviceman
W. H. Culbertson	Primary Serviceman
A. L. Honnell	Primary Serviceman [172]
L. A. Phinney	Primary Serviceman
Clarence C. Prinslow	Primary Serviceman

IV.

That plaintiffs at all times mentioned in this action were employed by defendant under an express provision of an oral and written agreement in effect during all of the time of their employment; that pursuant to said agreement, plaintiffs were employed at a stipulated monthly salary

based on 40 hours of work each week and were to receive in addition thereto, additional compensation at one and one-half times their regular hourly rate for all hours worked in excess of forty hours in each work week. That plaintiffs worked in excess of forty hours in each work week during the period covered by this action, but did not receive the compensation required by the Acts, although all of said work time and overtime was compensable under said agreement and said Acts.

V.

That Nellie M. Johnson is the duly acting, qualified and appointed administratrix of the estate of Frank Johnson, deceased, plaintiff herein, who was employed as a substation attendant and substation operator by defendant for a period of three years prior to the filing of this action.

VI.

That the plaintiff, Loyd H. Bell, was in the military service of the United States between September 22, 1942, and March 10, 1943; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action. [173]

That the plaintiff, Herbert S. Kaneen, was in the military service of the United States between July 20, 1945, and March 29, 1946; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action.

That the plaintiff, Lawrence E. Jackson, was in the military service of the United States between December 7, 1943, and January 28, 1944; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action.

That the plaintiff, Paul W. Cockrell, was in the military service of the United States between October 29, 1943, and the present date; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action.

That the plaintiff, Myron E. Glenn, was in the military service of the United States between July, 1944, and the present date; that pursuant to Section 205 of the Soldiers & Sailors Civil Relief Act of 1940, and amendments thereto, the period of his military service cannot be included in computing any period of limitation for the bringing of this action.

VII.

That on frequent occasions during three years prior to the filing of this action, since March 19, 1942, in the case of those plaintiffs who are not veterans and for a longer period than three years in the case of the plaintiffs who are veterans, the defendant employed all of the plaintiffs for [174] certain hours in excess of the work weeks established by Section 7 (a) (1) (2) (3) of the Fair Labor Standards Act of 1938; that the defendant failed to pay the compensation for overtime hours in excess of the work weeks prescribed by the provisions of said Sec-

tion; that the dates of employment, number of hours and amounts of compensation for such overtime for the plaintiffs is a matter reported on the books kept by the defendant; plaintiffs have no accurate record of said dates, hours and compensation claimed to be due, owing and unpaid from the defendant to the plaintiffs, and, accordingly, an accounting should be rendered by the defendant to the plaintiffs from the time that plaintiffs were so employed to the date that this action is adjudged, to determine the amount of said claims. That all of the records of said dates, hours and compensation claimed to be due, owing and unpaid from defendant to the plaintiffs are in the possession of the defendant. That there is due and owing and unpaid from the said defendant to the said plaintiffs such compensation for the time during which they and each of them were employed in excess of the work weeks established by said Act in such amounts as shall be determined by said accounting.

VIII.

That the plaintiffs are entitled to additional sums equal to the amounts claimed by them, as liquidated damages by virtue of the provisions of Section 16 (b) of the Fair Labor Standards Act; that plaintiffs have employed David Sokol, attorney duly authorized to practice in the above-entitled Court, and by virtue of said Section 16 (b) said attorney is entitled to be awarded a reasonable attorney's fee herein.

And by Way of a Further, Separate and Distinct Cause of Action, Plaintiffs Allege: [175]

I.

Plaintiffs repeat and reallege all of the allegations set forth in paragraphs I, II, III, V, VI, VII and VIII of the first cause of action herein as though the same were set forth herein in full.

II.

That by custom and practice in effect at the time of employment of plaintiffs, and at the time that plaintiffs worked overtime as hereinabove set forth, all of said overtime work was compensable.

Wherefore, plaintiffs prays that the defendant be required to account to plaintiffs and each of them for the total number of hours which each has been employed, up to and including the date that this matter shall be determined, in excess of the minimum work weeks prescribed by said Act, and the amount of compensation that is required to be paid by said Acts, and that upon said sums being computed, a judgment be entered for the plaintiffs and each of them, and against defendants for such amounts as the accounting will show that they are entitled to receive, together with an additional amount as liquidated damages, and a reasonable sum for attorney's fees, costs herein and interest on the amounts due.

DAVID SOKOL

Attorney for the Plaintiffs Herein [176]

[Verified.]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Sep. 2, 1947. Edmund L. Smith,
Clerk. [177]

[Title of District Court and Cause]

NOTICE OF MOTION FOR PARTIAL SUMMARY
JUDGMENT

To the Defendant and Its Attorneys:

You and Each of You Will Please Take Notice that all of the plaintiffs, substation attendants and operators and substation relief men in the above entitled action, upon the Affidavit of B. E. Moses, Robert C. Green, Oathy G. Horne, George F. Larsen, Floyed E. Downs, F. E. McClanahan, G. W. Starke, E. N. Sweitzer, Archie Trengoning, C. C. Blenis and W. B. Burton, the points and authorities herein and upon all of the pleadings, admissions and stipulations heretofore had, will move this Court on the 22nd day of September, 1947, at 10:00 A. M. or as soon thereafter as counsel can be heard, for an order pursuant to Rule 56 of the Rules of Civil Procedure granting partial summary judgment in favor of the plaintiffs who are substation attendants and operators and substation relief men, and referring the matter to a Special Master for the purpose of computing the amount of damages due [178] to each such plaintiff, and upon such determination granting such plaintiffs herein an equivalent amount for liquidated damages and an additional amount for a reasonable attorney's fee, and for such other and further relief as to the Court may seem just and proper in the premises.

Dated: Los Angeles, August 29, 1947.

DAVID SOKOL

Attorney for Plaintiffs. [179]

Received copy of the within this 2 day of Sept., 1947.
Norman S. Sterry.

[Endorsed]: Filed Sep. 2, 1947. Edmund L. Smith,
Clerk. [180]

[Title of District Court and Cause]

AFFIDAVIT IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT

State of California

County of Los Angeles—ss.

The undersigned plaintiffs in the above entitled action being substation attendants and operators and substation relief men state that the following is a true account of the nature of the work of such plaintiffs for the period covered by this action.

Nature of Work Performed

A—Hours of Employment

1. The employment agreement between the plaintiffs and defendant provided that they would be employed in their capacities as substation men and were required to be and remain at all times on the defendant's premises for 24 hours of each day of work; during which period they were required to be available at all times to perform the duties required of them by defendant.

Plaintiffs were not permitted to leave defendant's premises [181] except in emergency when granted permission to leave, or on their days off only, and then only when a qualified operator was available to replace them at the particular substation. If the plaintiffs substation attendants and operators left the premises unattended at any time during their 24 hour work day they were subject to dismissal.

During the 24 hour period of each work day the plaintiffs were at all times subject to the rules and regulations and authority of the defendant and were at all times during said 24 hour period of each work day amenable to

defendant's discipline and instructions as to work and conduct on the premises.

2. Conditions of Work for substation attendants and operators.

The plaintiffs who were substation operators and attendants were required as a condition of their employment to live only on the premises of the defendant in houses rented from the defendant, for which they paid rent and paid for the utilities. The substation itself, the switch-yard and the home adjacent thereto were enclosed by a fence of steel construction. In accordance with the posted rules of the defendant, no one was permitted to go into the substation building or switch-yard except the operator or an authorized Edison employee.

In the substation building itself there are located various switching devices as well as much electrical equipment. Adjacent to the home, and in the general area, are located other electrical equipment consisting of switches, transformer banks, regulators, condensers, switch control mechanism, batteries and various other types of electrical equipment.

On the outside of the substation building there is an alarms bell approximately 3 or 4 inches in diameter which can be heard over an area of several hundred feet.

In the home of the substation operators, as distinguished from the substation building, there was located a telephone of the private line of the Edison system, and in many stations an outside [182] telephone used for communicating with persons outside of the Edison system and with customers and users of power.

There was also in the home an alarm bell approximately 3 or 4 inches in diameter, located usually above the kitchen

door, which could be heard throughout the immediate area. On the premises of the substation there was located a small building used as relief quarters and garage. Relief quarters are used by the relief operator. The relief operator does not have his home on the premises, but lives elsewhere and travels from station to station.

Relief quarters consist of a small room in which is located a lavatory and shower. The relief operator is usually on the premises one day, however, he may be there longer if the regular attendant is away on vacation or for a longer period of relief. In the relief quarters there is the same type of alarm bell and telephone as in the home.

3. Routine Duties of the Substation Plaintiffs

To inspect station each morning; make routine trip tests on oil circuit breakers; hourly readings of line loads and temperatures; check meter readings after street lights are turned on in order to check for peak loads on each line; turn on street lamps as per code signals; report to switching center; take instructions and battery readings and record same; maintain daily log; perform routine and emergency switching; maintain buildings and grounds in clean and orderly condition. This involves maintaining lawns and grounds around station and home as well as washing and polishing of station interior. Answer calls from customers after the district office of the defendant in the particular town served by the station is closed.

The plaintiffs usually spend their time up to 6 p. m. in and about the substation building. Dependent upon the season of the year they would have to be in the substation building later to turn on the street lights.

At night, plaintiffs were usually in their homes, although [183] they might spend time within the substation

also, if they so desired, or when required by emergency. In their homes, where there was an outside telephone for customers' calls, the telephone would ring and would be answered by the attendant or operator, or relief man. These calls came to the substation after the closing of the district office of the defendant in the town or towns served by the substation. The calls related to customers' complaints, such as blown out fuses, interrupted services and the like, and the substation attendants and operators would see that the trouble was taken care of.

On receipt of such calls the plaintiffs either rendered such advice as they could over the telephone, or called the switching center in order to have trouble shooters sent out. There was an average of 400 calls per month of this nature. The plaintiffs, substation attendants and operators and relief men, did not receive during the period covered hereby, their overtime pay for these telephone calls or compensation of any kind for such work, nor did they receive pay for the work in connection with street lighting.

Telephone calls relating to trouble were answered by the station attendants and operators during the day where there was no district office in the area.

When the street lights went on, an alarm bell would ring in the station and if it did not turn off, the plaintiffs would have to go to the station and then reset the alarm, otherwise no other alarms would be received that night in case of trouble. Also, the plaintiffs would have to go to the station to see that the proper loads were carried on the street lights.

In addition to the foregoing, the Edison private line itself would ring at various intervals throughout the night, and the plaintiffs were required to listen to their particular

signal. Thus the plaintiffs were awakened by all the calls coming into the home, interrupting their sleep, and they had to be alert at all times to perform the defendant's requirements. [184]

4. Effect of the 24 hour tour of duty.

Because the plaintiffs were required on the premises of defendant for 24 hours each work day as a condition of employment, and were not free to go and come as they pleased after their regular 8 hours work, but were required to hold themselves in instant readiness to serve defendant, the normal living of the plaintiffs was interrupted. The requirement that plaintiffs listen for the telephone signals and alarms at night, affected their night time sleeping hours and their normal living.

If a qualified relief man was not available to relieve plaintiffs on their days off, they would have to remain on the premises 24 hours each day until relief was obtained. Sometimes this resulted in the plaintiffs not having sufficient food available for a period of time and endangered the health of the plaintiffs and their families.

In case of illness, since the plaintiffs could not leave the premises, they were dependent upon physicians of the defendant who came to the premises in emergency.

Since some of the stations were located far from settled communities, the plaintiffs would have to do their shopping in larger communities on their days off, thus taking up a considerable part of their off duty time, on days when they were relieved.

The purpose of the defendant's rule requiring the plaintiffs to remain on the premises 24 hours each day, was for the sole benefit, convenience and necessity of the defendant. This is evident by the fact that if the plaintiffs

were not available throughout the 24 hours, destruction of the defendant's property would follow. Thus for example: A routine check of an ammeter will prevent the overloading of a power line. By transferring part of the power load to another line, damage is prevented to the line itself and loss of power to the customer. A regular check on the transformer bank may show the temperature dangerously high. By checking, the operator [185] may discover that the circulating pump is off. Failure to correct this may cause damage to defendant's equipment. Routine checks of the meters might show them behaving erratically, and by thus checking the switches the station attendant may discover that the switch contacts within the switch bank were arcing. Failure to discover this might mean that oil would become hot and explode and set fire to the switch, dropping the load on the bank and thus putting a lot of consumers out of service.

If the plaintiffs were not available to check the various instruments, transformers could be overheated and destroyed, causing loss in excess of \$50,000, cost of some of the transformers. A loss of service resulting from the failure of any of the plaintiffs to perform their required duties would result in large property losses to the defendant.

The plaintiffs' presence on the defendants' property 24 hours each work day is of vital importance to all industries in the area because even the failure to turn on street lighting would disrupt commerce.

B—Wages

Prior to the Fair Labor Standards Act of 1938 the plaintiffs received only their salary for all of the aforesaid duties. By order issued by the defendant, after the F. L.

S. A. went into effect, and throughout the period covered by this action, it was agreed that the plaintiffs would perform all of their aforesaid duties and would be paid a stipulated monthly salary, and that in addition, plaintiffs would receive time and a half their hourly rate bases upon a forty hour week for all hours worked in excess of 40 in any work week. The plaintiffs did, after December 24, 1943, receive overtime pay at one and one-half times their hourly rate for work denominated by the defendants in their answer as "extraordinary or emergency active duty."

The payment of overtime compensation for emergency active [186] duties relates only to emergency calls during the nighttime hours, thus during the nighttime hours if there is an emergency situation affecting the substation the alarm bell rings and the station attendant or relief man must answer that alarm. If he is required to leave the home and go to the station to perform work, he has received the overtime as hereinafter set forth. However, if the alarm comes in and the employee has to dress in order to go out and perform the work and he is thereupon notified by telephone that it is not necessary, the station attendant has not received the overtime for such time. The overtime pay for the emergency callouts was subject to the following broad qualifications: Should the station operator perform emergency active duty after December 24, 1943 during the hours of 6:00 P. M. and 8:00 A. M. the operators were required to make specific note of such work and the time involved. Overtime payment for such work noted by the substation attendants was paid only after having received the specific approval of a division manager or clerk or switching center.

The Plaintiffs herein were paid for only forty hours per week together with the emergency callouts above referred to, except during the period of War Manpower Regulations when they received 8 hours overtime for the sixth day of work in the work week. For the balance of the time spent in waiting for emergency callouts and in the performance of various routine duties such as turning on street lights, checking peak loads, resetting alarms, and answering telephones plaintiffs did not receive compensation in accordance with the Act or the agreement between the parties.

Not only was this true in the case of the regular station attendant but it was also true in the case of the relief man who had his home away from the premises of the defendant and maintained a separate home and yet at the same time was required by the employment agreement to travel from station to station, day after day, attending to the requirements of the defendant, required to remain [187] on the premises of the defendant twenty-four hours of each work day, without receiving the compensation required by the Acts and agreement between the parties.

From an examination of the routine duties required of the plaintiffs, it is apparent that the regular duties of the plaintiffs normally and usually continued on into the hours of 6:00 P. M. to 8:00 A. M. The plaintiffs performed numerous functions by, for and at the order of the defendant which involved interruptions in their sleep and evening hours, for which they did not receive overtime compensation, as required by the Acts and agreement be-

tween the parties. Thus, for example, time spent in answering short alarms, or the 10 to 15 trouble calls from consumers that were usually received, or the task of turning street lights on and off and checking meters to prevent overloading of power lines, all such normal and routine tasks performed between the hours of 6:00 P. M. and 8:00 A. M. were not compensated for by the defendant.

When overtime payments were made they were calculated by the defendant in the following manner: Plaintiffs' monthly rate of pay was multiplied by 12 (the number of months in the year) and divided by 52 (the number of weeks in the year) and this was divided in turn by 40 (the stipulated hours of work in the week). It was in this manner that the hourly rate was arrived at, and it was on said hourly rate that the defendant paid for some of the overtime as aforesaid at time and one-half the hourly rate.

Plaintiffs now seek an accounting so that they will be compensated for all of such work. [188]

The undersigned plaintiffs in the above entitled action have read the foregoing affidavit and the same is true of their own knowledge.

B. E. MOSES

Subscribed and sworn to before me this 21st day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

ROBERT C. GREEN

Subscribed and sworn to before me this 21st day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

OATHY G. HORNE

Subscribed and sworn to before me this 21st day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

GEORGE FRANK LARSEN

Subscribed and sworn to before me this 22nd day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

FLOYD E. DOWNS

Subscribed and sworn to before me this 22nd day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

F. E. McCLANAHAN

Subscribed and sworn to before me this 23rd day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

G. W. STARKE

Subscribed and sworn to before me this 23rd day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

E. N. SWEITZER

Subscribed and sworn to before me this 26th day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

ARCHIE TREGONING

Subscribed and sworn to before me this 26th day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

C. C. BLENIS

Subscribed and sworn to before me this 26th day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

W. B. BURTON

Subscribed and sworn to before me this 26th day of August, 1947.

(Seal)

DAVID SOKOL

Notary Public in and for Los Angeles County,
State of California

[Endorsed]: Filed Sep. 2, 1947. Edmund L. Smith,
Clerk. [190]

[Title of District Court and Cause]

REQUEST FOR ADMISSIONS

To the Defendants and Their Counsel:

Please Take Notice that pursuant to Rule 36 of the Federal Rules of Civil Procedure, you are requested to admit within fifteen (15) days hereof, for purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, the following:

1. That the following documents are genuine as of the dates thereon; and were effective during period of this action:

- a. Division order #4, dated January 21, 1935, attached hereto as Exhibit "A".
- b. Operating Department order affecting substation employees, signed by C. M. Cavner, attached hereto as Exhibit "B". [191]
- c. Operating Department order #A-26, dated July 1, 1935, attached hereto as Exhibit "C".
- d. Operating Department order #A-30, dated June 11, 1935, attached hereto as Exhibit "D".

2. You are further requested to admit subject to all pertinent objections as to admissibility which may be interposed at the trial, the following:

- a. That at all times covered by this action there was in effect the following paragraphs in orders #A-36, dated January 1, 1942, and revised January 1, 1943, introduced in evidence at the pre-trial as plaintiffs' Exhibits "1" and "2"; such paragraphs reading as follows:

“(4) Week-period employees, which includes station attendants and any other employe who may be temporarily assigned to this classification.”

“(4) Week-period employees have no regular scheduled working hours and are subject to call twenty-four hours per day on each day worked. Forty hours of work shall constitute a work-week. Days off shall be equivalent to two days a work-week. The work-week is established as starting Monday and continuing through the following Sunday.”

DAVID SOKOL

Attorney for Plaintiffs [192]

EXHIBIT “A”

Copy

Division Order #4

Distribution Substations

Southern and Long Beach Division

January 21, 1935

SOUTHERN CALIFORNIA EDISON COMPANY
LTD.

Subject: Taking Leave from Station

To: Station Chiefs

No Station Chief shall leave his Station (emergencies excepted) without first obtaining his Division Superintendent's permission, except when regularly relieved for days off.

Before seeking the approval of the Division Superintendent:

1. One Man Station: Chief to call respective switching center and inquire if arrangements can be made to have responsible operator relieve you. If not, it may be possible for Division Superintendent's office to make arrangements.

2. Two men or more Station: Chiefs be positive that your operator relieving you is capable of handling Station.

3. Switching Center Station: Chiefs arrange to have your second man at Station in your absence.

In other words, never request to leave your station without having a qualified operator for your Station, able to relieve you. Have complete story before calling Division Superintendent.

Incorporate above which is applicable to your Station, in your Station Instructions.

(Sgd.) C. M. CAVNER

C. M. CAVNER, Division Supt.

Approved:

L. L. Dyer

Supt. Dist. Substations

E. N. Sweitzer

Tom Neal R. Ledin [193]

EXHIBIT "B"

Copy

Southern California Edison Company, Ltd.

Operating Department,

Working Conditions And Payment of Wages. (Revised
Jan. 1, 1943)

Sheet #2, Section #5, Hours of labor. Heading B (4)

Week Period Employees: Have no regular scheduled working hours and are subject to call 24 hours per day on each day worked.

Forty hours of work shall constitute a work-week. Days off shall be equivalent to two days a work-week. The work-week is established as starting Monday and continuing through the following Sunday.

(Signed) C. M. Cavner

Superintendent of Substations

(Signed) H. W. Tice

Mgr. of Operation

Sheet # 1, Section #4 Classification of Employes,
Heading B (4).

Week Period Employees: Which includes station attendants and other employes who may be temporarily assigned to this classification. [194]

EXHIBIT "C"

Operating Department
Substation Organization
July 1, 1935

A-26

Personal Conduct

Do not indulge in any practice which may reflect adversely upon yourself or the Company. If there is any question in your mind at any time as to what your conduct in connection with the job should be, do not hesitate to ask your Division Superintendent for his opinion.

Guard your tongue

This applies to the giving of information to press reporters or to the public. When people wish information concerning the Company, direct them courteously to the District Manager's office.

Use of Radio while on Duty

The use of radios in the station building is prohibited at all times, except upon special approval of the Division Superintendent. Radios in relief quarters are never to be played in such a manner as to interfere with the operator's ability to hear alarms or to note any abnormal condition at the station.

Charging Personally-owned Storage Batteries

The charging of personally-owned storage batteries by the use of station M. G. Sets falls into the same class with jumpers on meters, and may be dealt with accordingly.

L. L. Dyer,

Supt. Distribution Substations.

D. J. Kennelly,

Supt. Transmission Substations. [195]

EXHIBIT "D"

Operating Department

A-30

Substation Organization

June 11, 1935

Reporting on Telephone, Use of Telephone

Checking Time and Setting Clocks

Each attended station will report to their respective Switching Center at regular hours each day according to a local schedule established at each location by the Division Superintendent. The last report of the day should include anything of importance or of an unusual nature which occurred at the station during the day, such as Electricians there, men on days off, vacations, sickness, switch kick outs, interruptions, etc.

Should you have any trouble at your station, such as a mistake in switching, equipment break down, burn out, accident, etc., notify your Switching Center by telephone immediately and follow up with a written report to your Division Superintendent. The Switching Center will notify the Division Superintendent's Office at once.

The Switching Centers will report directly to the Division Superintendent each morning when he is on the job, and he will designate the station in the Division which will receive the daily morning report on Saturdays, Sundays and holidays. These morning reports to the Division Superintendent should be completed by 7:45 A. M. so that he can make his report to the General Office between 7:50 a. m. and 8:20 a. m.

At the time of the earliest report each morning, each station is expected to check time with the switching center, and be sure that the station clock is indicating correct time.

When the operator in a one or two men station goes to his cottage or relief quarters for lunch, or when going off shift for the night, he is to call the switching center from the cottage or [196] relief quarters, and have the switching center test his telephone bells to be sure he is in communication. The switching center will keep a temporary record of the time and origin of calls from outlying stations, calling to the attention of the Division Superintendent, persons who are consistently irregular in these matters. These regulations are established in the interest of better service and protection of the men. Experience has shown that safety and a high degree of service are maintained only by careful following of routine with constant attention to checking every detail; therefore full cooperation of all men is expected.

L. L. Dyer,

Supt. Distribution Substations.

D. J. Kennelly,

Supt. Transmission Substations.

[Endorsed]: Filed Sep. 19, 1947. Edmund L. Smith.
Clerk. [197]

[Title of District Court and Cause]

ANSWER TO THIRD AMENDED COMPLAINT

Comes now the defendant, and for answer to the Third Amended Complaint on file herein:

Answer to the First Alleged Cause of Action

Specifically answering Paragraph II of the first alleged cause of action in said complaint contained:

I.

(A) Defendant admits that electrical energy generated at Boulder Dam in Arizona was transmitted to certain of defendant's major substations in California, but denies that the electrical energy so received was distributed or sold in the State of California as generated, and in this connection alleges that after it was received, it was passed through the defendant's transformers at its [198] major substations and its voltage reduced or stepped down, and after being so reduced or stepped down it was transmitted into defendant's power lines and commingled with electric energy obtained by defendants from other sources in California, and the commingled electrical energy was sold to defendant's various customers within California. Defendant alleges that none of the plaintiffs performed any service necessary or incident to the receipt of said electrical energy or reducing or stepping down its voltage.

(B) Defendant, basing its answer on its information and belief as to the effect of the facts hereinabove alleged, avers that all of the said sales of electric energy by said defendant were intrastate sales and not interstate sales.

II.

Specifically answering Paragraph III of said first alleged cause of action in said complaint contained:

(A) Defendant admits that it employed each of the said plaintiffs named herein at some time subsequent to March 19, 1942, in the classifications and during the times as follows, and at no other times or periods:

<u>Name</u>	<u>Capacity</u>	<u>Period (All dates inclusive)</u>
Howard L. Andersen	Substation Attendant and Relief Operator (Substation)	) Before 3/19/42 to 9/26/43
	Apprentice Operator —Hydro	) 9/27/43 to 9/7/44
Andy G. Austin	Substation Attendant	9/9/43 to 10/9/44
C. C. Blenis	Substation Attendant	9/25/44 to Present
Harold A. Boynton	Substation Attendant	Before 3/19/42 to 8/31/43
W. B. Burton	Substation Attendant	3/23/43 to Present
E. K. Dickerson	Substation Attendant	Before 3/29/42 to 6/12/42
[199]		
Floyd E. Downs	Substation Attendant and Relief Operator (Substation)	4/3/44 to 8/28/44
Merle Edgerton	Substation Attendant	3/19/42 to 9/21/45
Eugene L. Ellingford	Substation Attendant	Before 3/29/42 to Present
C. R. Frazier	Substation Attendant	Before 3/29/42 to Present
Myron E. Glenn	Substation Attendant	Before 3/29/42 to 7/10/44; 3/11/46 to 3/25/46
Lawrence G. Hagerman	Substation Attendant and Hydro Station Attendant	) 3/25/43 to 2/21/44
P. G. Hanlon	Substation Attendant and Substation Relief Operator	) 1/21/43 to Present
William E. Hogg	Substation Attendant and Substation Relief Operator	) 5/12/43 to 1/7/45

<u>Name</u>	<u>Capacity</u>	<u>Period (All dates Inclusive)</u>
Oathy G. Horne	Substation Attendant	Before 4/13/42 to 8/31/44
W. S. Hostetler	Substation Attendant	Before 3/29/42 to 9/30/45
L. F. Hudson	Substation Attendant	4/28/43 to Present
Frank Johnson (now deceased)	Substation Attendant	Before 3/19/42 to 12/13/45
Paul L. Lowery	Substation Attendant and Substation Relief Operator	) 5/16/44 to 10/31/44))
Verner Neher	Substation Attendant and Substation Relief Operator	) 11/17/44 to) Present)
Thomas E. Osborne	Substation Attendant and Substation Relief Operator	) 6/21/44 to 10/14/44))
Marion S. Poston	Substation Attendant	2/15/43 to 7/17/44 [200]
M. E. Roach	Attendant—Hydro Plant and Hydro Plant Operator	) Before 3/19/42 to) 7/31/43)
G. W. Stark	Substation Attendant	Before 3/19/42 to 2/28/47
E. N. Sweitzer	Substation Attendant	Before 3/19/42 to 1/31/47. (Retired 2/1/47 and immedi- ately rehired on spe- cial contract as Sub- station Attendant.
Archie Tregoning	Substation Attendant	10/1/42 to Present
Robert C. Green	Substation Attendant	Before 3/19/42 to Present
F. E. McClanahan	Substation Attendant	Before 3/19/42 to Present
F. D. Schwalbe	Substation Attendant	Before 3/19/42 to Present
Harlan E. Mayes	Substation Attendant	1/5/43 to Present
Arthur E. Fontaine	Substation Attendant and Substation Relief Operator	) 4/23/45 to 12/15/45))
Lawrence E. Jackson	Substation Attendant	6/22/42 to 12/6/43; 2/14/44 to Present
Richard W. Rodenbeck	Substation Attendant and Substation Relief Operator	) Before 3/19/42 to) Present)

<u>Name</u>	<u>Capacity</u>	<u>Period (All dates inclusive)</u>
Rudolph C. Greiner	Substation Attendant and Substation Relief Operator	) 3/4/43 to Present)
H. J. Krekeler	Substation Attendant	6/13/44 to Present [201]
C. E. Foster	Substation Attendant	1/8/45 to Present
J. A. Henle	Substation Attendant	9/16/43 to Present
L. W. Hennig	Substation Attendant and Substation Relief Operator	) Before 3/19/42 to 3/25/43)
Herbert S. Kaneen	Substation Attendant	Before 3/19/42 to 10/31/43; (various occupations not included in this suit, 11/1/43 to present)
Edward M. Kirste	Substation Attendant	Before 3/19/42 to Present
Sidney F. LaFond	Substation Attendant	Before 3/19/42 to Present
George F. Larsen	Substation Attendant	2/9/43 to Present
L. S. Morgan	Substation Attendant and Substation Relief Operator	) 8/1/42 to 12/6/45)
Benjamin E. Moses	Substation Attendant Substation Relief Operator	) Before 3/19/42 to 12/31/46 (Utility Man—Territorial—1/1/47 to present))
J. W. McKernan	Substation Attendant	Before 3/19/42 to Present
Charles S. Myrenius	Substation Attendant	4/20/42 to 11/27/42
Arthur L. Neff	Substation Attendant	4/22/42 to Present
James C. Schrader	Substation Attendant	Before 3/19/42 to Present
Harold A. Trunnell	Substation Attendant	10/8/45 to Present
V. V. B. Wert	Substation Attendant	Before 3/19/42 to Present
J. J. Bryan	Hydro Station Attendant	) Before 3/19/42 to Present)
E. G. Eggers	Head Works Tender	6/1/44 to 12/31/46; (Utility Man 1/1/47 to present)
F. E. Griffes	Head Works Tender	Before 3/19/42 to Present

<u>Name</u>	<u>Capacity</u>	<u>Period (All dates inclusive)</u>
G. H. Bartholomew	Head Works Tender	Before 3/19/42 to Present (Temporarily employed in other occupations: Mechanic's Helper 2/15/44 to 3/7/44; Power Equipment Operator 3/8/44 to 3/20/44; Tractor Driver 3/21/44 to 5/18/44, etc.)
Merle Bartholomew	Head Works Tender	Before 3/19/42 to 8/31/45 (Stream Gauger 9/1/45 to Present)
Loyd H. Bell	Head Works Tender	6/1/42 to 10/5/42 (Guard 5/18/43 to 10/31/44); 11/1/44 to Present
Monroe H. Huntington	Hydro Station Attendant	9/16/42 to 10/31/44
Roye B. Johnson	Hydro Station Attendant	11/1/42 to Present
Fred C. Ray	Head Works Tender	Before 3/19/42 to Present
C. Rogers	Hydro Station Attendant	9/1/42 to Present
George C. Wooldridge	. . . . .	(Utility Man 10/1/42 to 11/30/42)
.	Head Works Tender	12/1/42 to 10/31/43
Paul W. Cockrell	Primary Serviceman	12/1/42 to 10/28/43; 12/18/45 to 8/31/46
J. D. Borden	Primary Serviceman	3/19/42 to 1/14/47
John M. Smith	Primary Serviceman	9/7/44 to 4/15/45; 4/22/45 to 6/14/45; 6/18/45 to 6/30/45
W. H. Culbertson	Primary Serviceman	3/19/42 to 8/31/42
[203]		
A. L. Honnell	Primary Serviceman	12/1/42 to 3/23/47
L. A. Phinney	Primary Serviceman	3/19/42 to 9/6/44; 9/25/44 to 12/31/44
Clarence C. Prinslow	Primary Serviceman	11/12/43 to 4/8/45

The following plaintiffs while remaining in the employ of the Company were absent from service because of industrial accidents during the periods as follows:

W. B. Burton.....1/9/44 to 1/18/44, inclusive

Herbert S. Kaneen.....3/23/44 to 3/29/44, inclusive [204]

(B) Defendant alleges that a number of the plaintiffs, during a portion of the time that they were employed as substation attendants or hydro station attendants, as hereinbefore set forth, were employed at three-shift stations, as hereinafter defined.

(C) Defendant denies that any of the said plaintiffs were employed in any occupation necessary to the generation or sale of electrical energy or power in interstate commerce, and in this connection defendant, basing its answer upon its information and belief as to what constitutes intrastate sales, alleges that all, each and every one of its said sales of electrical energy were intrastate. Defendant denies that any of said plaintiffs were engaged in any occupation necessary to the generation, distribution, or sale of electrical energy in interstate commerce, and in this connection alleges that all of said plaintiffs who were primary servicemen or substation operators and attendants or substation relief operators and attendants were not engaged in any occupation incident to or connected with the generation of electrical energy, but that their occupation was incident to the distribution of electrical energy by the defendant herein, and that all of the plaintiffs who were employed as head works tenders or hydro station attendants or hydro station relief attendants were engaged in occupations incident to the generation of electrical energy, but not connected with or incident to its distribution.

(D) Defendant believes and therefore admits that some of its customers to whom its electrical energy was deliv-

ered were engaged in the production of goods for interstate commerce, and that some of such customers used the electricity so furnished in the production of such goods.

III.

Specifically answering Paragraph IV of said first alleged cause of action in said complaint contained:

(A) Defendant admits that each said plaintiff was employed by the defendant in the capacity and during the times [205] heretofore set forth in Paragraph II hereof. Except as herein admitted, defendant denies each and every allegation, matter and fact in said Paragraph IV of said complaint contained, generally and specifically.

(B) Further, in connection with the denial of the allegations of Paragraph IV, and in further answer to said Paragraph IV of said first alleged cause of action in said complaint, defendant alleges that each plaintiff was orally employed, and denies that the agreement as to compensation of any said plaintiffs was as in said Paragraph IV alleged. On the contrary, the said defendant alleges that each plaintiff was employed at a monthly salary which was accepted by such plaintiff and was understood and agreed by him to be the full and only compensation for all services to be performed by said employee except for emergency services performed during the nighttime hours, as the terms "emergency services" and "nighttime hours" are hereinafter defined.

(C) Defendant alleges that the plaintiffs listed and described as primary servicemen were scheduled to and did for five days a week work on an eight-hour shift per day; that at the end of each said shift each said primary serviceman was free to engage in any activity which he saw fit, except that during certain days of the week he was

required to leave with the defendant a telephone number where he could be reached in case his services were needed, and that each said plaintiff was paid not less than time and one-half for any actual service performed by him beyond the total of forty hours per week, or outside of his regular scheduled working hours.

At Santa Paula as there was no station attendant, the names of the primary servicemen were listed as such in the local telephone book, and during certain days of the week each of said primary servicemen, in addition to the requirement that on said days if he left his residence he furnish the defendant with a [206] telephone number where he could be reached in case of an emergency, was required to take complaint calls at his residence direct from customers. For brevity of designation, hereafter the time between shifts will be designated as to primary servicemen by the term "nighttime hours," and any services performed during said period, other than leaving their telephone numbers with the defendant or receiving telephone calls direct at their residence, as "emergency services." Each said primary serviceman, including each plaintiff employed in said capacity, was paid not less than time and a half for such emergency services performed during said nighttime hours.

Defendant alleges that there was no contract between any said primary servicemen, including each plaintiff employed in said capacity, and the defendant to pay said primary servicemen anything additional for either receiving calls at their residences or leaving their telephone numbers with the defendant in case they left their residences; nor was there any payment for such activities by either custom or practice, or at all. The defendant alleges as aforesaid that no payments whatever were made to the

primary servicemen except the monthly salary, and not less than time and a half for emergency services as hereinbefore defined during the nighttime hours, as hereinbefore defined.

(D) Defendant alleges that at some of its substations and some of its hydro stations it operated what are known as three-shift stations, and that the operators worked a scheduled eight-hour shift; that at the expiration of said eight-hour shift they were free to go anywhere they pleased and to engage in any activity they pleased, and were paid not less than time and a half for any services performed by them either after or before their eight-hour shift.

For brevity of designation, periods between shifts will, as to said operators at three-shift stations, be referred to as "nighttime hours," and as to said operators any active service which they were called on to perform during said nighttime hours as [207] "emergency service." Defendant alleges that there was neither contract, custom, nor practice to pay said operators at three-shift stations anything other than a monthly salary, and not less than time and a half for emergency services, as hereinbefore defined, performed during nighttime hours.

(E) Defendant alleges that the said plaintiffs described as substation operators and attendants who worked at substations other than three-shift stations, were paid a monthly salary which was substantially in excess of the minimums provided for by the Fair Labor Standards Act; that as aforesaid it was agreed between each of said plaintiffs and the defendant that the said monthly salary should be full payment for normal services of each said plaintiff, whether active or inactive. Defendant further alleges that the normal active services required of substation operators

and attendants did not ordinarily require in excess of two to five hours a day, and often not more than two to three hours a day; that due to the nature of the work, except as to certain readings which they were required to make at designated hours at certain stations, and, during the winter months, switching at certain stations to turn on street lights, there were no scheduled hours of work for said substation operators and attendants, each substation operator and attendant being allowed to arrange his own hours of work as he saw fit; that the normal active duties of substation operators and attendants, including these plaintiffs, could be and were ordinarily performed during the daytime; that each substation operator and attendant was required by defendant to live on the property of the defendant for five days each week in a house located near the substation and rented to him by defendant, in order to be able to render necessary service at any time in case of an emergency; that each such resident substation operator had the privilege of having his family live with him. Defendant is informed and believes, and therefore alleges, that each and all of said substation operators having any [208] family availed themselves of said privilege; that if there were any cases in which a substation operator did not do so, it was because for personal reasons he did not desire to have his family or some particular member of it reside with him. Defendant further alleges that during the time he was not required to perform any active service each such plaintiff could engage in any activity he desired which did not take him beyond such distance from the substation or his residence as to prevent his being able to hear a signal requiring emergency service. Defendant further alleges that because of the nature of the employment, it was understood and agreed between each substation operator and attendant, including each plaintiff em-

ployed in that capacity, and the said defendant that, evaluating the employment as a whole, the inactive duties of each said plaintiff and the normal active duties were the equivalent of not more than eight hours of active service. Defendant further alleges that, as hereinbefore alleged, each of said plaintiff substation operators and attendants at all times mentioned herein was paid a monthly salary which, as hereinbefore alleged, was paid and received as compensation for all normal active and inactive services performed by said plaintiffs, but that in order to compensate said substation operators and attendants for extraordinary or emergency active duties, defendant, prior to March 19, 1942, until on or about December 24, 1943, paid to substation operators and attendants, including such of the plaintiffs as were then in its employ in said capacity, not less than time and a half for such active duties as they were called on to perform between the hours of 10:00 P. M. and 8:00 A. M., and from on or about December 24, 1943, paid such compensation for such services performed after 6:00 P. M. and prior to 8:00 A. M., said hours being hereinafter referred to for brevity of designation as to said substation operators and attendants and relief operators and attendants as "nighttime hours," and any active service performed by any of said plaintiffs during said nighttime hours, as hereinbefore defined, as [209] "emergency service." That the accounting department of defendant computed the hourly basis for such overtime compensation in the same manner that it computed the hourly basis for overtime compensation of any other operating employee, that is to say, by multiplying the monthly salary by 12 (the number of months in a year), and dividing the result by 52 (the number of weeks in a year), and dividing the result thus determined by 40. That said method of computing the hourly rate was that used as to

all employees of the defendant who were paid a monthly salary and was in accordance with the agreement between each said plaintiff and the defendant as hereinbefore alleged, and that considering the employment of each said plaintiff as a whole and the slight amount of active duties required, his employment was the equivalent of not more than eight hours of active service.

(F) Defendant alleges that the duties of the substation relief operators were the same as those of the substation operators and attendants, as alleged in Subparagraph “(E)” hereof, with the exception that such relief operators moved from station to station, normally being at any one station only one to two days, and living in housekeeping quarters provided for such purpose near said station. That the substation relief operators were not normally accompanied by nor did they, normally, live with the members of their families at the stations; but that their duties were, at each station, to relieve the operator, and during their stay at each station, their duties would be the same as those of the regular attendant of the station, and the terms and conditions of their employment were the same as hereinbefore alleged as to substation attendants; that is to say, they were paid a monthly salary which was substantially in excess of the minimums provided by the Fair Labor Standards Act. Said salary was paid to relief operators and attendants semi-monthly, and it was agreed between each said relief operator and attendant, including each plaintiff employed in that capacity, and the defendant that such salary should be full compensation for all normal services, [210] active or inactive, performed by each said relief operator and attendant; and it was understood and agreed between each said substation relief operator and attendant, including each plaintiff employed in that capacity,

and the said defendant that in evaluating the employment as a whole, the active and inactive duties of each such relief operator were the equivalent of not more than eight hours of active service. That prior to, and at all times since March 19, 1942, the said relief substation operators and attendants were, the same as resident substation operators and attendants, paid not less than time and a half for any emergency service performed by them during the nighttime hours, as the said terms "emergency service" and "nighttime hours" are hereinbefore defined in Subparagraph "(E)" hereof.

(G) That the said plaintiffs listed as head works tenders were employed in the Hydro Division, performing work incidental to the production of electrical energy, but not in its sale or distribution. That each said plaintiff had no scheduled working hours, but was allowed to plan his normal day's work and his lunch hour to suit his convenience. That each said plaintiff was paid a monthly salary which was substantially in excess of the minimums provided for in the said Fair Labor Standards Act, and it was agreed as aforesaid between each head works tender, including each plaintiff employed in that capacity, and defendant that said salary should be full compensation for all normal services, active or inactive, performed by each said plaintiff. That normally, the active duties of the plaintiff F. E. Griffes would take between seven and eight hours per day. Except for said plaintiff Griffes, the normal active duties of each plaintiff head works tender would occupy between four and eight hours per day, and on an average throughout a week, would be performed in substantially less than forty hours. That it was agreed between each said head works tender, including each said plaintiff employed in that capacity, and the defendant, that,

[211] evaluating the employment as a whole, the inactive duties of each said head works tender employee and his normal active duties were the equivalent of eight hours of active service. That at all times mentioned in said Third Amended Complaint, each head works tender has made his own time report. That on such time report there is a space provided for showing overtime. That prior to and ever since March 19, 1942, each head works tender has not reported less than eight hours of work for any day on which he has reported as working, irrespective of whether on that particular day he performed as much as eight hours of active duty or not; that whenever any head works tender (including each and all of the plaintiffs employed in such capacity) reported more than forty hours of work for any week, he was paid not less than time and a half for the hours reported as in excess of forty hours for said week; and on and after May, 1943, and at some stations before said date, whenever any head works tender (including any and all plaintiffs employed in that capacity) reported more than eight hours of work for any one day, he was paid not less than time and a half for the time in excess of eight hours for said day, regardless of whether his weekly report showed work in excess of forty hours per week.

(H) That the employment of each plaintiff listed as a hydro station attendant and each hydro station apprentice attendant, other than at a three-shift station, was similar to the employment of substation operators and attendants at substations other than three-shift stations; that is to say, each hydro station attendant and apprentice attendant, including each plaintiff employed in that capacity, was paid a monthly salary, which was paid semimonthly, and it was agreed between each said hydro station attendant,

including each plaintiff employed in that capacity, and the defendant, that said salary should be in full payment for all normal services of each said hydro station attendant, whether active or inactive. That at other than three-shift stations, there were no regular [212] scheduled hours of work, but that their active duties ordinarily would not require eight hours of active work, and that it was agreed between each plaintiff and the defendant that in evaluating his employment as a whole it was the equivalent of not more than eight hours of active service. That each said hydro station attendant and apprentice attendant employed in that capacity, including each plaintiff employed in that capacity, was required by the defendant to live on the property of the defendant for five days each week, in a house located near the powerhouse; and during certain days of the week, not exceeding five, and at many stations less than five, when not engaged in any active duty was required to remain so close to the station house or his residence as to be able to hear an alarm bell in case his services were needed in case of an emergency, in order to be able to render necessary services at any time in case of an emergency; that each such resident hydro station attendant had the privilege of having his family live with him. Defendant is informed and believes, and therefore alleges, that each and all of said hydro station operators having any family availed themselves of said privilege; that if there were any cases in which a hydro station operator did not do so, it was because for personal reasons he did not desire to have his family or some particular member of it reside with him. Defendant further alleges that during the time he was not required to perform any active service, each plaintiff could engage in any activity he pleased which on certain days, as aforesaid, would not take him beyond such distance from his residence and the power-

house so as to prevent him from hearing a signal requiring emergency service.

In this connection, defendant alleges that at its hydro stations at Borel and Kern River No. 1, the operators had scheduled eight-hour shifts, but said stations were not three-shift stations as defined in Subparagraph "(D)" hereof, in this: that after the shift, one of the operators was required to remain close enough to the station or to his residence to hear an alarm in case of an [213] emergency; that such duty was divided between the operators at said station so that such duty after their shift was required of them less than five days per week. Defendant further alleges that the plaintiff M. H. Huntington was employed for a portion of the time subsequent to March 19, 1942, at Borel and also at Kern River Station No. 1, but that none of the other plaintiffs were employed at said stations, or either of them, or at any three-shift stations, as defined in subparagraph "(D)" hereof.

(I) That at all times mentioned in said Third Amended Complaint, each hydro station attendant and apprentice attendant has made his own time report. That on such time report there is a space for showing overtime. That prior to and ever since March 19, 1942, each hydro station attendant and apprentice attendant (including the plaintiffs employed in said capacities), notwithstanding the fact that his normal active duties would ordinarily be less than eight hours, reported not less than eight hours of work for any day which he reported as working, irrespective whether on that particular day he performed eight hours of active duty or not. That whenever the time reports of any of the hydro station attendants and apprentice attendants (including each and all of the plaintiffs employed in such capacities) showed more than forty hours

per week, he was paid not less than time and a half for work reported in excess of forty hours for said week; and on and after May, 1943, and at some stations before said date, whenever the time reports of any hydro station attendants or apprentice attendants (including each and all of the plaintiffs employed in such capacities) reported more than eight hours of work for any one day, he was paid not less than time and a half for the work reported in excess of eight hours per day, regardless of whether or not his weekly reports showed work in excess of forty hours for that week.

(J) That for the purpose of computing the overtime compensation, the hourly rate was figured in the same manner as for the said [214] substation operators and attendants as hereinbefore alleged; that said method of computing said hourly rate was that used as to all of its employees who were on a monthly salary, and was in accordance with the agreement between each said plaintiff and the defendant, as hereinbefore alleged; that considering the employment of each plaintiff as a whole, it was the equivalent of not more than eight hours of active service.

(K) Defendant alleges that during the period that the War Manpower Commission decreed a forty-eight-hour week for the industry in Southern California, defendant at various and different times required its operating employees in its several departments to work six days a week instead of five, and that each and all of its said operating employees, including each and all of the plaintiffs who were then in its employ, did work the sixth day without any objection thereto, and without any claim that they were already working more than forty hours per week. Defendant further alleges that for the sixth day, it paid said operating employees, including all of the plaintiffs then in

its employ, not less than time and a half for eight hours of work, notwithstanding the fact that, as hereinbefore alleged, normally the active services of each of said plaintiffs on said sixth day would not equal eight hours of active service. Defendant alleges that none of the said plaintiff substation operators and attendants or relief operators and attendants then in its service, nor any of the plaintiff primary servicemen in its service, reported as overtime for the said sixth day more than eight hours of service, except where some one or more of said plaintiffs reported performing emergency service during the nighttime hours, as hereinbefore defined, and that none of the plaintiff head works tenders or hydro station attendants or apprentice attendants reported more than eight hours of overtime service for the said sixth day, solely because of a requirement not to leave the premises.

(L) Defendant specifically denies that it had any [215] agreement with any of the said plaintiffs as to services or compensation except as hereinbefore alleged, or that it at any time agreed to pay said plaintiffs or any of them for or on account of any activity of the said employees except as herein alleged, and denies that any of the plaintiffs herein, prior to joining in the above-entitled suit, at any time claimed that they were entitled to additional compensation to be paid for by this defendant or gave any indication whatsoever that the employment arrangements as aforesaid did not continue to be mutually acceptable to them.

(M) Defendant alleges that because of the facts hereinbefore alleged, the proper evaluation of the employment of each of its said resident employees, to wit: substation operators and attendants and relief operators and attendants, including each of the plaintiffs employed in that ca-

capacity; head works tenders, including each of the said plaintiffs employed in that capacity; and hydro station attendants and apprentice attendants, including each of the plaintiffs employed in that capacity, was the equivalent of not more than eight hours of active service, and that the agreement between each of said employees, including each of said plaintiffs herein, as hereinbefore alleged, was a reasonable and proper agreement.

IV.

Specifically answering Paragraph VI of said first alleged cause of action in said complaint contained, defendant alleges that its records show that during the periods hereinafter alleged, each of the plaintiffs was absent on military leave during the periods hereinafter alleged, but defendant has no knowledge or information as to whether they were actually in service during the times that they were on military leave. Basing its answer upon its records and defendant's lack of knowledge as to what the plaintiffs did during the periods of their leaves, defendant admits and alleges as follows:

(A) That Lloyd H. Bell was absent from the service of the [216] defendant on military leave from October 6, 1942, to March 29, 1943, inclusive; but for lack of knowledge, information and belief denies that during any of said time the said plaintiff was in military service.

(B) That the plaintiff Herbert S. Kaneen was absent from the service of the defendant on military leave from June 23, 1945, to March 31, 1946, inclusive; but for lack of knowledge, information and belief denies that during any of said time the said plaintiff was in military service. Defendant further alleges that the said plaintiff was one

of the original plaintiffs to this suit filed on or about the 19th of March, 1945.

(C) That plaintiff Lawrence E. Jackson was absent from defendant's service on military leave from December 7, 1943, to February 13, 1944, inclusive; but for lack of knowledge, information and belief denies that during any of said time the said plaintiff was in military service.

(D) That plaintiff Paul W. Cockrell was absent from the service of the defendant on military leave from October 29, 1943, to December 17, 1945, inclusive; but for lack of knowledge, information and belief denies that during any of said time after leaving defendant's service the said plaintiff was in military service. Defendant alleges that said Paul W. Cockrell intervened in this suit on May 1, 1945.

(E) That plaintiff Myron E. Glenn was absent from the service of the defendant on Military leave from July 11, 1944, to March 10, 1946, inclusive; but for lack of knowledge, information and belief denies that during any of said time the said plaintiff was in military service. Defendant further alleges that the said plaintiff was one of the original plaintiffs to this suit filed on or about the 19th of March, 1945.

V.

(A) Specifically answering Paragraph VII of the said first [217] alleged cause of action in said complaint contained, defendant specifically denies that the defendant has employed any of the said plaintiffs herein at any of the times alleged in said paragraph in excess of forty hours per week without paying the said plaintiff at least time and a half therefor.

(B) Further answering said paragraph, defendant admits that it has records showing the hours of work of its various employees, including the plaintiffs, and alleges that such records consist of and are based upon time reports; that the time reports of each plaintiff have been made out and turned in by each said plaintiff, each said time report constituting the representations by each plaintiff making it out as to the time worked by said plaintiff. In this connection the defendant alleges that each and all of its employees of the classes involved in this suit, including each and all of the plaintiffs, made out their own time reports, and that on each time report was a space furnished for overtime. That notwithstanding the facts heretofore alleged, each and all and every employee of the classes involved in this suit, including each and all of the plaintiffs, at all times, that is to say, prior to and after March 19, 1942, to the date hereof, in making out their time reports have customarily reported eight hours of normal duty, irrespective of whether they performed eight hours of active duty, for each and every day which they reported as working; and each and all of the substation operators and attendants and relief operators and attendants, including the plaintiffs employed in that capacity, and each and all of the primary servicemen, including each and all of the plaintiffs employed in that capacity, have reported in the space provided for overtime no overtime except for emergency services performed during the nighttime hours, as said terms have heretofore been defined; that the said hydro station attendants and apprentice attendants and head works tenders, including the plaintiffs employed in such capacity, reported no overtime [218] except where, in unusual emergency cases, they performed more than eight hours of active service per

day. During the time that each and all of the said employees of said classes, including the plaintiffs employed in those classes, were required to work six days per week, they reported for the sixth day eight hours of normal time; and the said substation operators and attendants, and the relief operators and attendants, including the plaintiffs employed in that capacity; and primary servicemen, including the plaintiffs employed in that capacity, made no report for overtime on the sixth day except for emergency service performed during the nighttime hours, as said terms have heretofore been defined; and the said hydro station attendants and apprentice attendants and head works tenders, including the plaintiffs employed in such capacities, reported no overtime for said sixth day except in the event that due to unusual emergency or extraordinary circumstances, they performed actually more than eight hours of active service on said sixth day. Defendant denies that any of its records show that there is any compensation due to the said plaintiffs, or any of them, or any other of its employees, whether for overtime or otherwise, other than current compensation due on the next pay-day. Defendant denies that it employed the said plaintiffs or any of them more than forty hours per week without paying them at least time and one half for the excess time that they were employed beyond forty hours per week. Denies that there is due, owing or unpaid from the defendant to the said plaintiffs, or any of them, compensation for any time for which they were employed in excess of the work-weeks established by said Act, or otherwise. Denies that there is any accounting due, or that any accounting should be required by said defendant to said plaintiffs, or to any other employee.

VI.

(A) Answering Paragraph VIII of said first alleged cause of action in said complaint contained, defendant admits that the [219] plaintiffs herein have employed David Sokol herein as their attorney, and that he is an attorney duly authorized to practice in the above-entitled court. Except as herein admitted, defendants deny the said Paragraph VIII and the whole thereof, generally and specifically, and each and every allegation therein contained.

(B) Further answering said Paragraph VIII of the first alleged cause of action in said complaint contained, defendant alleges that in not making any payments to the said plaintiffs herein for alleged overtime, it acted at all times in good faith and in a bona fide belief that in paying each said plaintiff the monthly salary agreed upon and the overtime for emergency services as hereinbefore alleged, it was complying with the law and was not violating any statute or contract or custom.

Answer to the Second Alleged Cause of Action

I.

Defendant here adopts, re-alleges, and repeats, with the same force and effect as though fully herein set forth at length, Paragraphs I, II, III, IV, V, and VI of its answer to the said first alleged cause of action.

II.

Said defendant, specifically answering Paragraph II, denies the said paragraph and the whole thereof, generally and specifically.

For a Second, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, defendant alleges:

I.

That as alleged in the first answer to the said first alleged cause of action, each and all of the plaintiffs herein were paid a monthly salary and no other compensation except the overtime payments as alleged and set out in Paragraph III of the said answer to the first alleged cause of action. Defendant [220] alleges that if the contract of employment were, as alleged by said plaintiffs in Paragraph IV of the said first alleged cause of action, based upon a stipulated monthly salary for forty hours of work per week, there was no contract to pay the said resident employees, that is to say, the plaintiffs employed as substation operators and attendants, and relief operators and attendants, and hydro station attendants and apprentice attendants any additional compensation whatever for being required to remain upon the Company's property or so close thereto as to be able to hear the alarm bell, and the head works tenders at or so close to their residences, as to be able to hear an alarm bell in case their services were needed for emergency work, nor was there any custom or practice to pay any of the said resident employees, to wit, said plaintiffs employed as substation operators and attendants, relief operators and attendants, hydro station attendants, and head works tenders, any compensation for their being required to remain, as aforesaid, either upon or so near the Company's property, or at or so near their residences, in the case of head works tenders, as to be able to hear an alarm bell, and that such activity on their part was not compensable by either contract or custom or practice at any of the said substations or hydro stations or places of employment of the said head works tenders, or at all. Defendant further alleges that, as averred in the said first answer

to the first alleged cause of action in said Third Amended Complaint, the plaintiffs employed as primary servicemen were employed to perform an eight-hour shift, and were paid a monthly salary therefor, and not less than time and a half for any emergency service performed in addition to their said eight-hour shift. That if the contract of employment were as alleged by said plaintiffs as aforesaid, and if the requirement of the defendant that in the event they left their residences after their shifts they advise the defendant of where they could be reached by telephone in case their services were required as an emergency, or in the case of the primary servicemen employed at Santa Paula that [221] during certain days of the week they take telephone complaints of customers directly on the telephone at their houses, amounted to any service at all, there was no contract between the defendant and any or either of said plaintiffs employed as primary servicemen to pay for such activity, nor was such activity paid for by the said defendant by custom or practice at any place of employment of any of said plaintiff primary servicemen, or at all.

For a Third, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, and by way of plea of estoppel:

I.

Defendant here re-adopts, repeats, and re-alleges Paragraph III of its first answer and defense as fully as though here set forth at length.

II.

Defendant alleges that at all times it relied in good faith upon the respective acts and representations and conduct of the plaintiffs as hereinbefore alleged in Para-

graph III of its first answer and defense, incorporated herein by reference; that so relying upon their acts and conduct, as hereinbefore stated, defendant believed in good faith that it was paying each and all of the said plaintiffs herein all the compensation which was due them under their contracts of employment and under any applicable laws, and that the employment arrangement continued to be satisfactory and acceptable to the said plaintiffs and that it was not incurring any penalties or liabilities whatever, and defendant based its tax reports to the United States Government and to the State of California upon the belief that it had no contingent or other liabilities, to any of said plaintiffs because of or on account of their employment, or at all. [222]

III.

Defendant alleges that if any of the said plaintiffs herein at any time prior to the institution of said suit had made or advanced the claims they are now asserting for overtime compensation, defendant, notwithstanding its belief that at all times it was complying with the law, would have taken steps to avoid the possibility of incurring further liability if plaintiffs' claims should be sustained, either by placing the various substations and hydro stations upon a three-shift basis as it did as soon as possible after the institution of this suit, or by taking such other appropriate steps as might then have seemed advisable to it.

IV.

Defendant alleges that it would be inequitable and unfair to permit the said plaintiffs, or any of them, to now claim or assert that they, or any of them, and the defendant did not agree that considering the active and inactive

duties of each plaintiff, the evaluation of his employment as a whole was not more than the equivalent of eight hours of active service, or that the said agreement was not a reasonable or proper agreement, or one in conformity with the facts and law, and said plaintiffs, or any of them, ought not now to be heard to claim or assert, and all of the plaintiffs are, and each is, estopped to claim or assert that they did not make the said agreement with the defendant as hereinbefore alleged, or that the said agreement was not reasonable and fair, and in conformity with the facts and law. [223]

For a Fourth, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, defendant alleges:

I.

Defendant here adopts, re-alleges, and repeats, with the same force and effect as though fully herein set forth at length, Paragraph III of its first answer to the said first alleged cause of action.

II.

That in the employment of each plaintiff herein in the various occupations as hereinbefore alleged, and under the arrangements and agreements as hereinbefore set out, in making the monthly payments to each said plaintiff as hereinbefore allaged, plus the overtime for emergency services as hereinbefore defined, and in omitting to make any additional or other payments, the said defendant herein acted in good faith and in the belief that it was fully complying with the provisions both of its contracts and agreements with said employees and with the said Fair Labor Standards Act, and that it acted in conformity with and in reliance upon administrative regula-

tions, orders, rulings, approvals, and interpretations, and administrative practices and enforcement policies of the Wage and Hour Administrator, the War Labor Board, and the War Manpower Commission with respect to the class of employers to which defendant belonged.

III.

That in July of 1939, the Wage and Hour Administrator issued Interpretative Bulletin No. 13, said bulletin being revised in October, 1939; in October, 1940; and in November, 1940. That as originally issued and as so revised, the sixth, seventh and eighth paragraphs thereof read and provided at all times after [224] its promulgation as follows:

“6. In a few occupations periods of inactivity need not be considered as hours worked even though the employee is subject to call. The answer will generally depend upon the degree to which the employee is free to engage in personal activities during periods of idleness when he is subject to call and the number of consecutive hours that the employee is subject to call without being required to perform active work—i.e., the frequency with which the employee is called upon to engage in work. In these cases, the nature of the employee’s work involves long periods of inactivity which the employee may use for uninterrupted sleep, to conduct personal business affairs, to carry on a normal routine of living, etc. A good example of this is the employee of a small telephone exchange operating a switchboard located in the employee’s house. During the night no one is in direct attendance at the switchboard and an alarm bell awakens the operator if a subscriber wishes

to make a telephone call. The operator has her bed alongside the switchboard and is able to get several hours of uninterrupted sleep every night, as experience over a considerable period of time may often demonstrate. Thus, if, over a period of several months, a telephone operator has been called upon to answer only a few calls between the hours of twelve and five in the morning, a segregation of such hours worked will probably be justified.

“7. In some cases employees are engaged in active work for part of the day but because of the nature of the job are also required to be on call for 24 hours a day. Thus, for example, a pumper of a stripper well [225] often resides on the premises of his employer. The pumper engages in oiling the pump each day and doing any other necessary work around the well. In the event that the pump stops (at any time during the day or night) the pumper must start it up again. Similarly, caretakers, custodians or watchmen of lumber camps, during the off season when the camp is closed, live on the premises of the employer, have a regular routine of duty but are subject to call at any time in the event of an emergency. The fact that the employee makes his home at his employer's place of business in these cases does not mean that the employee is necessarily working 24 hours a day. In the ordinary course of events the employee has a normal night's sleep, has ample time in which to eat his meals and has a certain amount of time for relaxation and entirely private pursuits. In some cases the employee may be free to come and go during certain periods. Thus, here

again the facts may justify the conclusion that the employee is not working at all times during which he is subject to call in the event of an emergency, and a reasonable computation of working hours in this situation will be accepted by the Division.

"8. In some cases employees may be subject to call after the completion of their regular working day; employees may be called upon after regular working hours to furnish emergency service to customers. If the employee is required to remain on call in or about the place of business of the company, the time spent should be considered hours worked. If, on the other hand, the employee is merely required to leave word where he can be reached in the event of a call and [226] is not tied down to any particular place, such time need not ordinarily be considered hours worked. The employee, however, should be considered as working at any time during which he is actually making a call and his hours worked would include all time traveling to and from such a call."

IV.

(A) That the Pacific Gas and Electric Company maintains and operates a plant for the generation, purchase, sale and distribution of electrical energy in Northern California and as such is an employer of the class to which defendant belonged.

(B) That in generating electricity, it employed head works tenders and hydro station attendants and relief attendants, and that it maintained substations for the distribution of its electricity and employed and maintained therein substation operators and attendants and relief

operators and attendants. Defendant on its information and belief alleges that the employment and conditions of employment of said head works tenders, hydro station attendants, and substation attendants was substantially the same as the employment of the same classes of employees by the defendant herein. Defendant, on its information and belief, alleges that each and all of said employees were paid by the said Pacific Gas and Electric Company a monthly salary, which was understood and agreed between said company and each of said employees to be in full for all of the services, active and inactive, performed by said employees. Defendant is further informed and believes, and therefore alleges, that said Pacific Gas and Electric Company pays each of its said employees for certain overtime for emergency active services performed by them similar to the practice of the defendant as hereinbefore set forth, and that the terms and conditions of work and employment of each class of resident employees of Pacific Gas and Electric Company was substantially the same as the terms and conditions of work [227] and employment of each class of resident employees of Pacific Gas and Electric Company was substantially the same as the terms and conditions of work and employment of the same class of plaintiff employees of the defendant herein.

(C) Defendant further alleges on its information and belief that the Utility Workers Organization Committee of the C.I.O., for and on behalf of said employees and many other classes of employees of the said Pacific Gas and Electric Company in 1943 demanded increased wages from the said Pacific Gas and Electric Company, and

after negotiating with the said company made application to the National War Labor Board for increases. That the said National War Labor Board appointed a mediation panel to hear evidence and make recommendations thereof. That the report to the said National War Labor Board by the said mediation panel as to resident employees, which included substation operators and attendants, hydro station attendants, and head works tenders, set up the Union's position and the Company's position as follows:

“(b) Premium Pay for Resident Employees

“The union requested that a premium of 25 per cent be paid to resident employees to compensate them for being available at their place of employment 24 hours a day.

“Union's Position—The union claims that 24 hours per day of a resident employee's time belong to the company; that the union slogan of ‘Eight hours for work, eight hours for sleep, eight hours for what you will,’ has no meaning for these employees; that they are as much confined to the premises as inmates of the county prison farm and that, since they are so distinctly at a disadvantage as compared to ordinary employees, they should receive some additional compensation.

“Company's Position—The company maintains that such employees receive compensation for more [228] hours than they actually work and that an additional premium is not justified. Resident employees live at or near the place of employment usually in a dwelling furnished by the company. They perform

routine duties which do not require sustained effort. The principal requirement is that the employee be available to necessary telephone calls and to perform switching as directed. They may leave the premises by arranging for a substitute. They do not work under direct supervision. They prepare their own time cards. While not actually engaged in duties for the company they are free to engage in entirely personal pursuits. They have a five-day week. They are paid for 40 hours per week but under normal conditions never work more than 30. They are compensated at one and one-half times the regular rate of pay for hours worked in excess of 40. Since they receive 40 hours' pay for 30 hours' work, they already have a premium of 30 per cent in actuality. To demand premium payments in such case would be to take undue advantage of the necessity of maintaining 24-hour service for the public. The company claims that the National War Labor Board does not sanction payment for non-work; that the situation of a resident attendant is not one of hardship and such jobs are greatly desired; and that the Wage and Hour Division of the Department of Labor has considered the case of such employees and determined that only the hours spent in work need be compensable."

That the recommendation of said panel was as follows: [229]

"3. Resident Employees

"The panel unanimously recommends that no change be directed in the matter of the wages of resident employees.

We were impressed with the fact that they are now receiving 40 hours' pay for 30 hours' work and time and one half for overtime; that they are their own timekeepers; and that they have considerable free time for their own pursuits.

We recognize that they are more or less limited in their coming and going and that in certain surroundings such limitations can be very irksome.

But balancing the values and the disvalues of the present arrangement we do not believe that undue hardships are involved."

That said report of the panel was made on or about the 8th day of July, 1943. That on or about the 28th day of September, 1943, by virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Executive Orders, directives, and regulations issued October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board made and issued its order with reference to all the matters in dispute, and in said order adopted the recommendation of the said panel as to resident employees, a portion of said order reading as follows:

"3. The union's request for premium pay for resident employees of the company is denied."

(D) Defendant on its information and belief alleges that since the situation of the resident employees of the said Pacific Gas and Electric Company so far as hours and conditions of work and [230] method of payment was in all respects substantially the same as the hours and conditions of work and method of payment of such plaintiffs herein, this defendant at all times in good faith

believed that said order as to resident employees of the War Labor Board was equally applicable to it and to each and all of such plaintiffs involved herein, and to all other employees performing the said services of such plaintiffs herein, and relied on said order.

V.

That shortly after the effective date of the Fair Labor Standards Act, the Administrator of the Act set up a regional office in Southern California, and, commencing sometime in 1939 and continuing thereafter, the books and pay-roll records of this defendant were inspected and the Company's compliance was investigated from time to time by representatives of said office, and the said regional office of the Administrator did not at any time inform this defendant that it was in any way violating the Fair Labor Standards Act; but, on the contrary, from time to time the representatives of said Administrator informed defendant that it was operating in strict compliance with the said Act, and on or about the 5th of July, 1941, the said defendant, through its executive Vice-President, Mr. Mullendore, was publicly advised by the Southern California Manager of the Wage and Hour Division of the United States Department of Labor that defendant was one whose records had been inspected and had been found to be operating in "complete compliance with the Act."

VI.

That at no time since the effective date of the Fair Labor Standards Act has the Administrator or any representative of the administrator or the War Labor Board, or any other governmental agency, made any complaint that the defendant was in any way violating the said Fair

Labor Standards Act in its employment and payment to the plaintiffs herein and other of its employees in the same classes [231] of employment as the said plaintiffs herein.

VII.

Defendant alleges that at all times it relied in good faith upon each and all of the aforesaid actions, rulings, and interpretations of the said administrative agencies of the Government of the United States.

For a Fifth, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, defendant alleges:

I.

That any award of liquidated damages against the defendant as prayed for in said Third Amended Complaint will operate to deprive the defendant of its property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States of America.

For a Sixth, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, and by way of plea of the statute of limitations, defendant alleges:

I.

That said action is barred so far as any liquidated damages are concerned under Subdivision 1 of Section 340 of the Code of Civil Procedure of the State of California for any services performed or rendered prior to

March 22, 1944, by the plaintiffs Howard L. Anderson, Eugene L. Ellingford, Myron E. Glenn, Herbert Kaneen, B. E. Moses, Charles Stanley Myrenius and Vernon V. B. Wert, [232] or any of them; for any services performed or rendered prior to May 1, 1944, by the plaintiffs C. C. Blenis, J. D. Borden, Harold A. Boynton, Paul W. Cockrell, W. H. Culbertson, E. G. Eggers, C. E. Foster, C. R. Frazier, F. E. Griffes, J. A. Henle, A. L. Honnell, Lawrence E. Jackson, Verner Neher, C. C. Prinslow, M. E. Roach, Clarence Rogers, John M. Smith, E. N. Sweitzer, or any of them; and for any services performed or rendered prior to June 19, 1944, by the plaintiffs Andy G. Austin, W. B. Burton, E. E. Dickerson, Oathy G. Horne, L. S. Morgan, L. A. Phinney, Marion S. Poston and Archie Tregoning, or any of them; for any services performed or rendered prior to July 11, 1944, by the plaintiff Lawrence G. Hagerman; for any services performed or rendered prior to September 10, 1944, by the plaintiffs Merle M. Edgerton, P. G. Hanlon, L. W. Heinig, W. S. Hostetler and L. F. Hudson, or any of them; for any services performed or rendered prior to October 9, 1944, by the plaintiffs Floyd E. Downs, William E. Hogg, G. F. Larsen, Paul L. Lowery, Thomas E. Osborne and G. W. Stark, or any of them; for any services performed or rendered prior to October 22, 1944, by the plaintiff Frank Johnson; for any services performed or rendered prior to October 29, 1944, by the plaintiffs Robert C. Green and F. E. McClanahan, or either of them; for any services performed or rendered prior to November 21,

1944, by the plaintiffs Sidney H. LaFond and F. D. Schwalbe, or either of them; for any services performed or rendered prior to November 30, 1944, by the plaintiff Harlan E. Mayes; for any services performed or rendered prior to December 10, 1944, by the plaintiff Arthur E. Fontaine; for any services performed or rendered prior to January 18, 1945, by the plaintiffs Rudolph C. Greiner, Monroe H. Huntington, and Edward M. Kirste, or any of them; for any services performed or rendered prior to January 31, 1945, by the plaintiff H. J. Krekeler; for any services performed or rendered prior to March 21, 1945, by the [233] plaintiffs G. H. Bartholomew, Merle Bartholomew, Lloyd H. Bell, J. J. Bryan, Roye E. Johnson, J. W. McKernan, A. L. Neff, Fred C. Ray, Richard W. Rodenbeck, James C. Schrader, Harold A. Trunnell and George C. Wooldridge, or any of them.

For a Seventh, Further, Separate, Distinct Answer and Defense to said complaint and to each and both causes of action therein contained, and by way of plea of the statute of limitations, defendant alleges:

I.

That under Subdivision 1 of Section 339 of the Code of Civil Procedure of the State of California, the action is barred for any services performed or rendered prior to March 19, 1943, by the plaintiffs Howard L. Anderson, Eugene L. Ellingford, Myron E. Glenn, Herbert S. Kaneen, B. E. Moses, Charles Stanley Myrenius and Vernon V. B. Wert, or any of them; for any services

performed or rendered prior to May 1, 1943, by the plaintiffs C. C. Blenis, J. D. Borden, Harold A. Boynton, Paul W. Cockrell, W. H. Culbertson, E. G. Eggers, C. E. Foster, C. R. Frazier, F. E. Griffes, J. A. Henle, A. L. Honnell, Lawrence E. Jackson, Verner Neher, C. C. Prinslow, M. E. Roach, Clarence Rogers, John M. Smith, E. N. Sweitzer, or any of them; for any services performed or rendered prior to June 19, 1943, by the plaintiffs Andy G. Austin, W. B. Burton, E. E. Dickerson, Oathy G. Horne, L. S. Morgan, L. A. Phinney, Marion S. Poston and Archie Tregoning, or any of them; for any services performed or rendered prior to July 11, 1943, by the plaintiff Lawrence G. Hagerman; for any services performed or rendered prior to September 10, 1943, by the plaintiffs Merle M. Edgerton, P. G. Hanlon, L. W. Heinig, W. S. Hostetler and L. F. Hudson, or any of them; for any services performed or rendered prior to October 9, 1943, by the plaintiffs Floyd E. Downs, William E. Hogg, G. F. Larsen, Paul L. [234] Lowery, Thomas E. Osborne and G. W. Stark, or any of them; for any services performed or rendered prior to October 22, 1943, by the plaintiff Frank Johnson; for any services performed or rendered prior to October 29, 1943, by the plaintiffs Robert C. Green and F. E. McClanahan, or either of them; for any services performed or rendered prior to November 21, 1943, by the plaintiffs Sidney H. LaFond and F. D. Schwalbe, or either of them; for any services performed or rendered prior to November 30, 1943, by the plaintiff Harlan E. Mayes; for any services

performed or rendered prior to December 10, 1943, by the plaintiff Arthur E. Fontaine for any services performed or rendered prior to January 18, 1944, by the plaintiffs Rudolph C. Greiner, Monroe H. Huntington and Edward M. Kirste, or any of them; for any services performed or rendered prior to January 31, 1944, by the plaintiff H. J. Krekeler; for any services performed or rendered prior to March 21, 1944, by the plaintiffs G. H. Bartholomew, Merle Bartholomew, Loyd H. Bell, J. J. Bryan, Roye E. Johnson, J. W. McKernan, A. L. Neff, Fred C. Ray, Richard W. Rodenbeck, James C. Schrader, Harold A. Trunnell and George C. Wooldridge, or any of them.

For an Eighth, Further, Separate, Distinct Answer and Defense to said complaint, and to each and both causes of action therein contained, and by way of plea of the statute of limitations, defendant alleges:

I.

That under Subdivision 1 of Section 338 of the Code of Civil Procedure of the State of California, the action is barred for any services performed or rendered prior to March 19, 1942, by the plaintiffs Howard L. Anderson, Eugene L. Ellingford, Myron E. Glenn, Herbert S. Kaneen, B. E. Moses, Charles Stanley Myrenius and Vernon V. B. [235] Wert, or any of them; for any services performed or rendered prior to May 1, 1942, by the plaintiffs C. C. Blenis, J. D. Borden, Harold A. Boynton, Paul W. Cockrell, W. H. Culbertson, E. G. Eggers, C. E. Foster, C. R. Frazier, F. E. Griffes, J. A.

Henle, A. L. Honnell, Lawrence E. Jackson, Verner Neher, C. C. Prinslow, M. E. Roach, Clarence Rogers, John M. Smith and E. N. Sweitzer, or any of them; for any services performed or rendered prior to June 19, 1942, by the plaintiffs Andy G. Austin, W. B. Burton, E. E. Dickerson, Oathy G. Horne, L. S. Morgan, L. A. Phinney, Marion S. Poston and Archie Tregoning, or any of them; for any services performed or rendered prior to July 11, 1942, by the plaintiff Lawrence G. Hagerman; for any services performed or rendered prior to September 10, 1942, by the plaintiffs Merle M. Edgerton, P. G. Hanlon, L. W. Heinig, W. S. Hostetler and L. F. Hudson, or any of them; for any services performed or rendered prior to October 9, 1942, by the plaintiffs Floyd E. Downs, William E. Hogg, G. F. Larsen, Paul L. Lowery, Thomas E. Osborne and G. W. Stark, or any of them; for any services performed or rendered prior to October 22, 1942, by the plaintiff Frank Johnson; for any services performed or rendered prior to October 29, 1942, by the plaintiffs Robert C. Green and F. E. McClanahan, or either of them; for any services performed or rendered prior to November 21, 1942, by the plaintiffs Sidney H. LaFond and F. D. Schwalbe, or either of them; for any services performed or rendered prior to November 30, 1942, by the plaintiff Harlan E. Mayes; for any services performed or rendered prior to December 10, 1942, by the plaintiff Arthur E. Fontaine; for any services performed or rendered prior to January 18, 1943, by the plaintiffs Randolph C. Greiner, Monroe

H. Huntington, and Edward M. Kirste, or any of them; for any services performed or rendered prior to January 31, 1943, by the plaintiff H. J. Krekeler; for any services performed or rendered prior to March 21, 1943, by the plaintiffs [236] G. H. Bartholomew, Merle Bartholomew, Loyd H. Bell, J. J. Bryan, Roye E. Johnson, J. W. McKernan, A. L. Neff, Fred C. Ray, Richard W. Rodenbeck, James C. Schrader, Harold A. Trunnell and George C. Wooldridge, or any of them.

Wherefore, defendant prays that plaintiffs take nothing by this action; for its costs of suit herein, and for such other and further relief as to the court may seem just in the premises.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for defendant Southern California
Edison Company, Ltd.

Received copy of the within Answer to Third Amended Complaint this 29 day of September, 1947. David Sokol (SJF), Attorney for Plaintiffs.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith,
Clerk. [238]

[Title of District Court and Cause]

AFFIDAVITS ON BEHALF OF THE DEFEND-
ANT IN OPPOSITION TO THE MOTION OF
PLAINTIFFS FOR PARTIAL SUMMARY
JUDGMENT

Affidavits of: G. E. Moran, C. R. Clark, R. E. Rice,
J. G. Winkelpleck, William H. Short, J. D. Garrison,
C. E. Pichler, R. G. Kenyon, William C. Mullendore. [239]

[Title of District Court and Cause]

AFFIDAVIT OF G. E. MORAN IN OPPOSITION
TO MOTION FOR PARTIAL SUMMARY
JUDGMENT

State of California

County of Los Angeles—ss.

G. E. Moran, being first duly sworn, deposes and says:

That he is a citizen and resident of the County of Los Angeles, State of California, and has been employed by the defendant in the action above entitled as superintendent of substations; that he has been such superintendent since January 25, 1945, and prior thereto was assistant superintendent of substations from January 1, 1941 to January 25, 1945. That affiant has read the answer of the defendant to the third amended complaint which is served and filed contemporaneously herewith, and has also read the affidavits filed by the plaintiffs in support of the motion for summary judgment [240] and the affidavits of J. D. Garrison and W. H. Short, served and filed contemporaneously herewith.

Affiant says that as superintendent of substations, and prior thereto as assistant superintendent of substations, he was required to be, and was and is familiar with the operation of such substations and with the services required of the substation operators. Affiant states that in speaking of substation operators and relief operators he will not refer to operators or relief operators working at what is commonly known as three-shift stations, that is to say, stations where the operators work on scheduled eight hour shifts and at the end of each shift are free to go wherever they please and do whatever they wish; that there are stations where three operators are employed and where there are no regular scheduled hours of work, and for that reason such stations are not included in the term "three shift stations," and that in this affidavit affiant will deal solely with the one, two and three man stations where there were no scheduled hours of work. The large majority of stations involved in this litigation were one man stations.

Affiant denies unequivocally that there was any contract of employment with any of the said plaintiffs of the character alleged in the first alleged cause of action set out in the third amended complaint. Affiant states that the employment of each said substation operator and attendant and each relief operator and attendant was made generally in the manner set out in the affidavits of J. D. Garrison and W. H. Short served and filed contemporaneously herewith, and that the contract of employment between each of the said substation operators and attendants and relief operators and attendants and the defendant was as set out in the answer of the defendant to the said third amended complaint contemporaneously served and filed herewith.

Affiant states that in addition to the substation relief [241] operators and attendants employed by the defendant in the manner set out in the affidavits of W. H. Short and J. D. Garrison contemporaneously served and filed herewith, there were quite often employees of the Company in other departments who were transferred from those departments to substations. Such transfers were sometimes made at the suggestion of the Company because, in the judgment of the foreman or superintendent of the employee, the work which he was doing had, because of his age, infirmities, or other cause, become too strenuous for him, and it was felt that he should be given a lighter duty job; in other instances, the transfer was made at the request of the employee himself. Affiant states that the plaintiff L. S. Morgan is an example of an employee being given a substation operator's job because of inability to perform more strenuous service. Originally he was a groundman, and the work of that position becoming too heavy for him, he was transferred to the position of a watchman, and from watchman to substation relief operator and attendant.

Affiant denies unequivocally that there was any agreement whatever to pay plaintiffs additional compensation in any sum or amount, or at the rate of one and one-half times the regular hourly rate for any work in excess of forty hours per week, or any agreement to pay overtime whatever, except for active emergency services performed during the night time hours as said terms are defined in the answer to the third amended complaint. Affiant denies specifically and categorically that there was any custom or practice in effect as alleged in Paragraph II of the second alleged cause of action in the third amended complaint contained. On the contrary, affiant states that the

only custom and practice was to pay the compensation in the manner set out in the answer to the third amended complaint and in the affidavits of said J. D. Garrison and W. H. Short; that none of said plaintiffs, or any other substation operator or relief operator has ever been paid anything other than the [242] monthly salary agreed upon and overtime for active emergency services which he reported rendering during the night time hours, as emergency service and night time hours are defined in the answer to the third amended complaint.

Affiant states that the duties of a relief operator are the same as those of a substation operator, the only difference being that the relief operator moves from station to station to relieve the regular operator at such stations, but that while relieving the operator of the station his duties are substantially the same as those of the resident operator; that there are housekeeping quarters at or near each said substation where the relief operator lives, but in moving from place to place, the relief operator is usually not accompanied by, and does not live there with, the members of his family.

Affiant states that the duties of the substation operators are very light; that they are as set out in the third answer to the interrogatories heretofore propounded by plaintiffs, and that as therein stated the duties are to inspect the station daily, to report to the switching center, to take instrument and battery readings and record the same; to perform routine and emergency switching of power lines in accordance with telephoned orders from the switching center and the written instructions; to keep the station and the cottage in which the attendant lives in order, and also to maintain the lawns and grounds. In addition to the above duties, the substation operator and attendant,

usually not oftener than once a month, and sometimes less frequently than that, makes routine trip tests; that the affidavits of the plaintiffs filed in support of their motion indicates that the routine trip tests are a daily part of their occupation. Affiant says that is not so, and they are normally not made oftener than once a month and frequently not that often. Affiant states that normal trip testing will require [243] from three to five hours, but there have been times when it will require as much as six to eight hours; however, to take more than four or five hours is unusual.

Affiant states that in the majority of its substations, the operators were not required to take outside telephone calls, and there was no outside telephone in his residence; that at certain stations the substation operator was expected to take outside telephone calls as a part of his regular duties.

Affiant states that he has no way of knowing whether or not the statement in the affidavit filed by plaintiffs is correct that the operators would average 400 calls per month, but doubts if, at the average station, calls would amount to anywhere near that number.

Affiant states that nothing was paid for time given for taking such calls received at times other than those designated in the answer to the third amended complaint as the night time hours; but that for calls received during the period defined in the answer as night time hours the substation operators and attendants have been paid for such time, but have not usually recorded the same on their daily time reports, being allowed to accumulate such time during the week and give an estimate of their accumulated time on their weekly time reports.

Affiant further states that so far as turning on street lights is concerned, that also is required at certain substations only. At certain periods of the year the lights are turned on before six o'clock p. m. in which case, of course, the operator is not allowed anything for time consumed. Where the lights have been turned on after six o'clock p. m., the substation operator and attendant has, since December 24, 1943, been allowed to make no report per day of that activity, but to accumulate the time and show it on his weekly time report. [244]

Affiant states that the Company has no way of knowing the amount of time consumed in taking outside telephone calls and in turning on street lights except from the time reports made out by the employees themselves.

The substation operators and attendants including all plaintiffs employed in that capacity lived in homes owned by the Company at or near the substation, for which they paid rent and paid for the utilities. Such homes were at all times freely accessible to any relatives, friends or other persons who might desire to visit with or contact the residents therein; that at substations where such homes were located within a fence, because of being adjacent to the substation which was fenced, that although no one was permitted to go into the substation building or switchyard except the operator or person authorized by the defendant, anyone was permitted to go to the home of the operator which was separately fenced or otherwise adequately separated from the substation and switchyard portions of the premises. At some substations the homes were in no way inclosed by fences and at some substations are located across the street from the substation. That the relief substation operators and attendants were furnished housekeeping quarters at each substation, which

were in the same enclosure as the resident operator's cottage, and were likewise available to and could be entered by any friends or relatives of the relief [245] operator and attendant, or any person desiring to visit him.

Affiant states that any resident operator and attendant or relief operator and attendant was privileged at any and all times to have friends and relatives visit him at his residence or relief quarters.

Affiant states that the following statement in the affidavit filed by plaintiffs in support of their motion for summary judgment is untrue:

"In case of illness, since the plaintiffs could not leave the premises, they were dependent upon physicians of the defendant who came to the premises in emergency." (Afft. p. 5, L. 16-18.)

Affiant states that the defendant does now, and at all times since March 19, 1942 and prior thereto has, maintained personnel from which relief could be provided to any plaintiff substation operator and attendant in case of illness or other emergency which might require the operator to leave the said premises. Affiant states that where a substation operator and attendant or relief operator and attendant reported that he was ill, and that he desired to leave his station on that account, that a relief operator and attendant would be sent from the relief personnel as quickly as possible; that if he requested a doctor to be sent to him without specifying any particular doctor, the defendant's doctor would naturally, and in the normal course, be sent to him; that if he desired another doctor than the defendant's physician, he was at liberty to call such other doctor himself or arrange to see him.

At some substations the attendant is required to answer telephone calls and report the same to the primary service men or the switching center, and at some substations they are also required to do switching to turn on street lights. Where this [246] switching occurs during what is denominated in the answer to the third amended complaint as "night time hours," they are allowed to, and do charge the time consumed as overtime.

The station grounds, lawns and shrubbery vary, so that it is impossible to say the precise amount of time required to maintain such grounds, as it would be more at one station than another. Aside from the work of maintaining the grounds and cottage, the other active duties of the station operator and attendant would not require normally more than two to three hours a day, and all of his duties, including keeping the grounds, station house and cottage in order, would occupy between two and five hours per day. During the remainder of the 24 hours, he is at liberty to do anything he pleases, engage in any activity he desires except that in the past he has been required to remain where he could hear a call in case he was needed for emergency switching.

The duties of the substation operator and attendant have always been generally considered among the easiest, if not the easiest, in the operations of the company.

At all times involved in this suit, such substation operators and attendants, and also the relief operators, have been paid a monthly salary, payable in semi-monthly installments.

While it is true that actually, a substation operator is occasionally called out of bed at night or in the early morning hours to perform emergency switching, and

there have been times when at some stations there have been quite a number of such call outs in a single night, or during a storm for several nights, affiant states upon his belief and knowledge of the operations of such substations that such interruptions on the whole are very unusual. Affiant is informed by counsel that there have been introduced in evidence schedules showing such call-outs as reflected by the overtime charged therefor by each such substation operator and attendant. Such schedules of course speak for themselves, but [247] affiant refers to them in support of his foregoing statements that on the whole, the call-outs during the night time hours are infrequent.

Affiant states as aforesaid, that at all times during his connection with the defendant, the substation operators and attendants have been paid a straight monthly salary; that such salary was paid to them for all the services they performed of every kind and nature, other than emergency services performed during night time hours, as said terms "emergency service" and "night time hours" are defined in the answer to the third amended complaint; and that at no time has there ever been any demand made by any substation operator and attendant, other than the filing of this suit and that of Raymond F. Drake, et al. v. Southern California Edison Company, Ltd., No. 5544WM in this court, for any additional or further compensation; that prior to and at all times subsequent to March 19, 1942, the defendant paid overtime for any services which the substation operators and attendants and relief operators and attendants performed in answering any call-outs during night time hours, as defined in the said answer to the third amended complaint.

That each substation operator and attendant and relief substation operator and attendant has, at all times involved herein, made out his own daily and weekly time report, and that on all such reports each and every operator and attendant and relief operator and attendant showed eight hours of normal time for each day notwithstanding the fact that normally, the active duties of such operator and attendant or relief operator and attendant would not require eight hours. Such fact was well known to the defendant and to each of said operators and attendants and relief operators and attendants; that none of said operators and attendants or relief operators and attendants had any scheduled hours whatever, or any time during the twenty-four in which to perform their services, except that at most substations, there were certain specified times at which they were required to call their switching center and to take periodic meter readings; and in the winter months at substations where they may turn on street lights at a specified time shortly prior to the commencement of night [248] time hours, as said term is defined in the answer to the third amended complaint, that the record of eight hours of normal time for each day's service could only be made by the substation operators and attendants and relief operators and attendants and accepted by the defendant on the basis that their job, that is, their active and inactive duties, was the equivalent of eight hours of active service.

Affiant further states that on each daily and weekly time report there was a space provided for entry of any

overtime, and that no substation operator or attendant or relief operator or attendant ever entered in any of said daily or weekly time reports any claim for overtime except for emergency services performed during the night time hours as defined in the answer to the third amended complaint; that when defendant advised its said substation operators and attendants and relief operators and attendants that because Southern California had been placed by War Manpower Commission upon a forty-eight hour week, they would be required to work for six days a week instead of five, and would be paid overtime for the sixth day, none of the substation operators and attendants or relief operators and attendants made any objection thereto, or claimed that they were then normally working more than forty hours per week, and during the time that they worked six days per week they reported on their daily and weekly time cards eight hours of normal time as overtime for the sixth day, unless they had been called upon to perform emergency service during the night time hours of said day, as said emergency service and night time hours are defined in the said answer to the third amended complaint.

That as superintendent of substations affiant has never heard or known of any claim being made, other than in this suit and the case of Raymond F. Drake, et al. v. Southern California Edison Company, Ltd., by any of the substation operators and attendants or relief operators and attendants that they were entitled to any [249] compensation over and above their monthly salary and such

overtime as they recorded on their said time reports. Affiant alleges that there are a great number of other substation operators and attendants employed by defendant under the same circumstances and conditions as these plaintiffs who have never made any claim for any additional compensation. Affiant states that to his best belief, the plaintiffs in this suit who are substation operators and attendants or relief operators and attendants comprise less than one-fifth of defendant's employees of that class from March 19, 1942 to this time, and that as aforesaid, none of the other employees not joining as parties have ever claimed or asserted that there is any compensation due them other than their monthly salary and the overtime recorded on their time reports, although affiant is informed and believes great efforts have been made to bring to their attention the claims asserted in this suit and to induce additional employees to join in this suit, including the following publication appearing in the November-December, 1945 issue of the I. B. E. W.-A. F. L. Utility News, Southern California Utility Employees Edition:

"Southern California Edison Company

This office has been asked on numerous occasions, the status of Edison employees who have not, to this date, signed up in the suit against the Southern California Edison Company for back pay, resulting from stand-by duty. Inasmuch as this case is handled by Mr. David Sokol, Attorney, for those employees who filed the suit, the questions were referred to him for

answer. The following is a letter received from Mr. Sokol:

International Brotherhood of

Electrical Workers

Local B-18

2316 West 7th Street [250]

Los Angeles, California

Attention: C. P. Hughes, Int'l. Rep.

Dear Sirs:

Pursuant to your inquiry, I am advising you that on July 23, 1945, the Hon. Ben Harrison, Judge of the U. S. District Court, sitting at Los Angeles, ruled in the case of Southern California Edison Company's sub-station operators, attendants, primary service-men and others, that only those employees who became parties to the action, could recover therein.

In other words, upon a judgment in favor of the plaintiffs, only those employees who are named in the suit will recover back pay in a double amount as required by the Act.

The company would not be required to pay anyone else.

Furthermore, those employees who delay in filing their claims, are sleeping on their rights and will lose back pay inasmuch as there is a statute of limitations of three years in which the action can be filed. Since our action was filed March 19, 1945, all persons in our suit will recover back to March 19, 1942.

However, if any one files a new suit at this time, separate and apart from our action, they would re-

cover as of this date from November 26, 1945, rather than March 19, 1942.

Very truly yours,

s/ David Sokol

DS:SJH

DAVID SOKOL

This office suggests that, in the future, all [251] employees who desire further information to contact Mr. David Sokol, 707 So. Hill Street, Los Angeles 14, California, direct by mail or in person as this case is out of the jurisdiction of Local B-18."

Affiant is informed and believes and therefore states, that the said publication is normally sent to each member of the union in good standing, and a large number of substation operators and attendants and relief operators and attendants now in the service, and who have been in defendant's service between the 19th of March, 1942 and the present time, have been and are members of the said union.

Further deponent saith not.

G. E. MORAN

Subscribed and sworn to before me this 24th day of September, 1947.

(Seal)

BARBARA ROWE

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires June 5, 1950.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [252]

[Title of District Court and Cause]

AFFIDAVIT OF C. R. CLARK IN OPPOSITION
TO MOTION FOR PARTIAL SUMMARY
JUDGMENT

State of California
County of Ventura—ss.

C. R. Clark, being duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the County of Ventura, State of California, and has been employed by the Southern California Edison Company as an apprentice operator and substation attendant for eleven years and eleven months and in such capacity has worked at the following substations:

Carpenteria

Casitas

That affiant has read the Affidavit of G. E. Moran, which is served and filed contemporaneously herewith, and particularly the [253] portions thereof setting forth the duties of a substation operator and the times normally required to perform such duties and also the methods of compensating the employees for such duties.

Affiant states that each of the statements appearing in the said Affidavit of G. E. Moran relating to such duties, times and methods of pay are full, true and correct statements and are truly representative of the facts and of the experience of the affiant in such positions.

Further deponent sayeth not.

C. R. CLARK

Subscribed and sworn to before me this 24th day of September, 1947.

(Seal)

BARBARA ROWE

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires June 5, 1950.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [254]

[Title of District Court and Cause]

AFFIDAVIT OF R. E. RICE IN OPPOSITION
TO MOTION FOR PARTIAL SUMMARY
JUDGMENT

State of California

County of Los Angeles—ss.

R. E. Rice, being duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the County of Los Angeles, State of California, and has been employed by the Southern California Edison Company as a relief operator, substation attendant, and operator for eleven years and two months and in such capacity has worked at the following substations:

Western Division—various stations

Casitas

That affiant has read the Affidavit of G. E. Moran, which [255] is served and filed contemporaneously herewith, and particularly the portions thereof setting forth the duties of a substation operator and the times normally

required to perform such duties and also the methods of compensating the employees for such duties.

Affiant states that each of the statements appearing in the said Affidavit of G. E. Moran relating to such duties, times and methods of pay are full, true and correct statements and are truly representative of the facts and of the experience of the affiant in such positions.

Further deponent sayeth not.

R. E. RICE

Subscribed and sworn to before me this 24th day of September, 1947.

(Seal)

BARBARA ROWE

Notary Public in and for the County of Los Angeles, State of California

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [256]

[Title of District Court and Cause]

AFFIDAVIT OF J. G. WINKELPLECK IN OP-
POSITION TO MOTION FOR PARTIAL
SUMMARY JUDGMENT

State of California

County of Los Angeles—ss.

J. G. Winkelpleck, being duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the County of Los Angeles, State of California, and has been employed by the Southern California Edison Company as an apprentice operator, substation attendant

and operator for six and one-half years, includes two years and two months' Military Leave, and in such capacity has worked at the following substations:

Coast Division—various stations

Macneil

Dalton. [257]

That affiant has read the Affidavit of G. E. Moran, which is served and filed contemporaneously herewith, and particularly the portions thereof setting forth the duties of a substation operator and the times normally required to perform such duties and also the methods of compensating the employees for such duties.

Affiant states that each of the statements appearing in the said Affidavit of G. E. Moran relating to such duties, times and methods of pay are full, true and correct statements and are truly representative of the facts and of the experience of the affiant in such positions.

Further deponent sayeth not.

J. G. WINKELPLECK

Subscribed and sworn to before me this 24th day of September, 1947.

(Seal)

BARBARA ROWE

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires June 5, 1950.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [258]

[Title of District Court and Cause]

AFFIDAVIT OF WILLIAM H. SHORT IN OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

State of California

County of Los Angeles—ss.

William H. Short, being first duly sworn, deposes and says:

I am now employed by the defendant and have been since February 18, 1919, when I first entered its employ. On January 1, 1938, I became Personnel Man, and thereafter was given the title of Personnel Supervisor and Superintendent of Personnel of the Operating Department.

Some time after 1940—I cannot state the exact time, but it may have been in 1941 or 1942—I was given the title of Supervisor of Employment over the entire Company. One of the duties of my office has been to interview applicants for employment by the Company. [259]

On March 19, 1942, and for some time prior thereto, and ever since, J. D. Garrison, whose affidavit is served and filed herewith, was my assistant and was the only assistant interviewing applicants whom I had in the department up to about a year or a year and a half ago. I have read the answer of the defendant to the third amended complaint herein.

From March 19, 1942, and for some time prior thereto, up to the present time, Mr. Garrison and I have interviewed all applicants for positions with the Company, with the exception of persons employed by managers, superintendents or foremen in the field in cases of emergency or for some other cause.

As stated, we added personnel to our department about a year or a year and a half ago, since which time some of the applicants have been interviewed by the other assistants. Prior to March 19, 1945, with the exception noted, all applicants were interviewed by either Mr. Garrison or me; I would say, however, that 85 to 90 percent of them were interviewed by Mr. Garrison.

More than 90 percent of all applicants coming to our department are interviewed for beginners' jobs, that is, the lowest bracket in any line of endeavor. Except for most persons who are applying for clerical jobs or office work, who usually have a definite position in mind, the average applicant simply comes in to find out if there is a job or position he can fill with the Company; in fact, I would say more than 90 percent of them seeking jobs outside of clerical or office work usually ask if people are being hired.

When a man asks such a question, either Mr. Garrison or I question him to see what experience or ability he had so as to determine whether he would fit in to any of the various operating departments of the Company. For example, if a man had no experience with electricity but had mechanical experience, we would talk to him about the jobs in the mechanical departments; or, if he had [260] been a chauffeur or truck driver, we would talk to him of some position involving the driving of trucks or other vehicles for the Company.

It not infrequently happens that a man has had experience or training that might fit him for more than one position. In that case, we discuss with him each of the said positions as fully as we can, describing the pay, his duties, the conditions and terms of work, and answer any and all questions that he may ask.

When we are discussing one or more positions with a man, we usually try to determine in which one of those he would be best satisfied, considering his previous experience and ability, and suggest that to him. He does not always follow the suggestion. If there happens to be a vacancy in any position which we think he would be qualified to fill he is asked to fill out an application, and we send him with the application to the head of the particular division where his services might be used. If there is no vacancy open in any of the lines in which we think he could be used by the Company and he is interested in one or more jobs for which we think he might be qualified, we ask him to make out an application which contains his address and telephone number, if he has one, and the application is filed. When a notification is received of an appropriate vacancy which we think the man could fill, we get in touch with him and request him to present himself for a further interview, at which time we review the position for which there is then a vacancy and explain to him the duties of that position, making sure that he understands the working conditions and salary of that particular job, and that he is agreeable to the salary and conditions. If so, he is then sent to the superintendent of the particular division and is interviewed by the superintendent or his assistant. If the superintendent or his assistant decides that the applicant is suitable, the applicant is sent back to the employment office with a direction to that effect. He is then sent with his application [261] to the medical department for medical examination. If he is not passed, the applicant is not employed. If he is passed by the medical department, he is given his application form to take with him to the department or division head, and is then instructed by his superintendent or foreman as to his duties, and put to

work. His application form is given to the clerk of the division, and is sent back by the clerk to the Comptroller's Office after it is approved by the necessary officers of the Company, and becomes a part of the Company's records.

There have been occasional cases where applicants have come in and asked definitely for a substation operator's job, or some other particular job. This has usually occurred where they have had friends working in some such position or where the applicant, from other causes, knows generally of the duties and pay of a particular job. That is very unusual, however, and as aforesaid, the large majority of applicants come in and ask if we are hiring people; this is true of the great majority of persons who have been employed for substations operators.

When an applicant is found to have had training or experience that might fit him for more than one position, we have customarily discussed with him the various positions for which we think he might be fitted, informing him of the pay for each position, the work, and the various conditions to enable him to compare the jobs and decide which, if any, he desires to apply for.

While I cannot now recollect having interviewed any one particular applicant who was finally employed as a substation operator and who had qualifications for more than one position, I know that during the course of years I have on several occasions discussed with a number of applicants ultimately employed as substation operators or relief operators and attendants, other positions for which I thought they either had training or experience. In doing [262] so, I explained the pay, and hours of work, and different working conditions of the various positions. Again, while I cannot specify any one certain person, I know there have been quite a number of times

where persons have been inclined to take one position and, after discussion, have taken another, usually because of our pointing out that we thought they were better qualified for the other position. I know there have been cases where men, who at first were inclined to apply for a position other than substation operator and attendant, who have, after discussion with Mr. Garrison or myself, eventually made application for that work for the reasons above stated, just as there have been instances where men who originally thought they would like to be substation operators and attendants have made application for another position which we thought they were better fitted for or because of some difference in working conditions.

When a man either applies for work as a substation attendant or, from our interviews, we have suggested that would be a job for which he could qualify, we then explain to him the duties of the job. I always told an applicant (and I know from overhearing conversations between applicants and Mr. Garrison that he has customarily told them) that he will commence as an apprentice operator, his first job being that of a relief operator and attendant; that for a short period he will serve under an experienced operator who will train him in the fundamentals of electricity, familiarize him with the circuits and equipment, and his duties, and that later on he will be assigned as a relief operator and attendant at one-man stations; that at such stations, the attendant was supposed to remain within hearing distance of the emergency bell for 24 hours a day, five days a week; that it was the duty of the apprentice or relief operator to relieve the regular attendant on his days off, which would necessitate the apprentice or relief operator remaining within hearing distance of the emergency bell [263] for 24 hours a day

for two days, at the end of which time he would proceed to another station under the same conditions, until he had worked five days, and during the period we were working six days a week because of Southern California being on a forty-eight hour week, I would state that he would have to remain within hearing distance of the emergency bell for twenty-four hours a day for six days a week instead of five.

I stated to each applicant that the next step in his promotion would be an attendant's job; that he would have a home to live in on the Company's property, which would be rented from the Company, and work under the same conditions as the attendant whom he had been relieving; that the work was fairly light, requiring only a few hours a day, including periodical logging of meter readings, and occasional mowing of lawns, trimming shrubs, etc. We also impress upon the applicant that one of the requirements of the job either as relief operator or afterwards as a resident attendant operator would be to remain within hearing distance of the emergency alarm for twenty-four hours a day, five days a week, and during the time we were on a six day week basis, for six days a week; that his actual active duties would probably occupy only two or three hours a day, and for the remainder of the time he could do as he pleased, so long as he remained within hearing of the alarm bells. I informed each applicant that he would receive a designated monthly salary for the position, which would be paid to him in semi-monthly installments.

After the defendant commenced paying time and a half for any active service performed by substation operators and attendants or relief operators and attendants during night time hours, as defined in the third paragraph

of defendant's answer to the third amended complaint, I would explain to each applicant prior to December 24, 1943, that he would be paid overtime or time and a half (I used the expressions interchangeably) for any service which he was called upon [264] to perform between the hours of ten o'clock p. m. and eight o'clock a. m., and after December 24, 1943, that he would be paid overtime or time and a half for any such service performed between six o'clock p. m. and eight o'clock a. m. I do not remember prior to the war any applicant for a position as apprentice or relief operator ever asking me about being paid overtime. During the war I do remember that there were a few applicants who I cannot identify by name who asked if they were paid any overtime or standby time, and I would invariably answer no, that they were paid a monthly salary which covered the entire job, and was the only compensation except for overtime payments made for any actual service performed between the hours of ten o'clock p. m. and eight o'clock a. m. or between six o'clock p. m. and eight o'clock a. m., dependent upon the period. I never at any time stated to any applicant who was discussing or considering a position as a substation apprentice operator or station attendant that his monthly salary was based upon any eight hours of work or any hours of work, or made any statement to him other than as I have heretofore stated.

While I was in charge of the office and supervising it, Mr. Garrison interviewed far more applicants than I did, but I know from hearing those interviews that the statements he customarily made were substantially along the lines set out that I made; also, during the last year or eighteen months when we have had additional help, they have also made the same statements.

Any language in the present tense has been used merely as a matter of expression and, while outlining the present custom, is equally applicable to all times covered by this affidavit, that is to say from March, 1942, to the present, and for that matter, is applicable to some period of time prior to said 19th [265] day of March, 1942.

WILLIAM H. SHORT.

Subscribed and sworn to before me this 22 day of September, 1947.

(Seal)

O. W. SCOTT

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Sept. 29, 1947. Edmund L. Smith, Clerk. [266]

[Title of District Court and Cause.]

AFFIDAVIT OF J. D. GARRISON IN OPPOSITION
TO MOTION FOR PARTIAL SUMMARY
JUDGMENT

State of California,
County of Los Angeles—ss.

J. D. Garrison, being first duly sworn, deposes and says:

I am a citizen of the United States and resident of the County of Los Angeles, State of California.

I am employed by the defendant in the action above entitled and have been employed by it for more than ten years last past. I am, and for more than ten years last past have been employment agent for the defendant, and am the Garrison referred to in several of the depositions that have been taken herein.

Mr. William H. Short is the head of the department wherein I work. [267]

I have read the Answer of the defendant to the Third Amended Complaint herein and the affidavit of Mr. Short, which is served and filed contemporaneously herewith, and state that the facts therein stated with reference to the methods of interviewing applicants is true and correct, and I adopt the same as my affidavit.

As stated in his affidavit, up until a year or a year and a half ago he and I were the only persons in the department who interviewed applicants for positions in the Operating Department, and I have interviewed the large majority of them.

As Mr. Short's affidavit covers the methods of interviewing all applicants, I will confine myself to the interviews which I have had of applicants who have ultimately been employed as substation apprentice or relief operators. As stated further in Mr. Short's affidavit, usually an applicant does not ask for any particular job or position, and it has not infrequently happened that applicants who have never heard of a substation operator and attendant have made application therefor after discussing that employment with me; and applicants who have had experience or qualifications for more than one job, after considering all such jobs have also selected that employment, and the converse has been equally true, that occasionally persons who had an idea of being employed as substation operators and attendants, or who were qualified for that and another position, after discussing it would make application for another position.

All the applicants who considered the job of substation operator and attendant I would tell that their first em-

ployment would be as apprentice or relief operators; that they would have a short period under an experienced operator who would train them in the fundamentals of electricity, familiarize them with the circuits, equipment, and their duties, and that later they would be assigned as relief operators and attendants at one-man stations; that at such stations they were supposed to remain within hearing distance [268] of the emergency bell for twenty-four hours a day, five days a week, and when we were operating six days a week because of Southern California being on a forty-eight-hour week, I would tell them that they were required to remain within hearing distance of the emergency bell twenty-four hours a day for six days a week; that it would be the duty of an apprentice or relief operator to relieve the regular attendant on his days off, which would necessitate the apprentice or relief operator's remaining within hearing distance of the emergency bell for twenty-four hours a day for two days, at the end of which time he would proceed to another station, under the same conditions, until he worked five days; and, of course, during the period when we were working six days a week, until he had worked six days.

I stated to the applicant that the next step in his promotion would be an attendant's job, and that he would have a home to live in on the Company's property, which would be rented from the Company, and that he would work under the same conditions as the operator and attendant whom he had been relieving. I told him further that the work was fairly light, requiring only a few hours a day, including periodical logging of meter readings, occasional mowing of lawns, trimming of shrubs, etc. I also impressed on the applicant that one of the requirements of the job either as relief operator or afterward as

a resident attendant operator would be to remain within hearing distance of the alarm bells twenty-four hours a day, five days a week, and, during the time we were on a six-day-week basis, six days a week; that his active duties probably would occupy only two or three hours a day, and for the remainder of the time he could do as he pleased, so long as he remained within hearing distance of the alarm bells.

I informed each applicant that he would receive a designated monthly salary for the position and would be paid in semi-monthly installments. [269]

After the Company inaugurated the system of paying overtime compensation for emergency services during the nighttime hours as defined in the third paragraph of the First Answer of the defendant to the Third Amended Complaint, I would explain to each applicant that he would receive such overtime payments for such emergency services.

Before the commencement of the war, I do not remember any applicant ever having discussed overtime compensation with me. After the war I believe there were a few applicants, whom I do not remember by name, who asked me whether they would be paid overtime or standby time, and I invariably answered, "No,"—that they were paid so much a month, which covered the entire job, except that they were paid for any actual active service performed during the nighttime hours as they are defined in the Answer to the Third Amended Complaint.

I cannot identify any of the plaintiffs by name and therefore cannot state that I did or did not interview as applicants either Eugene L. Ellingsworth or H. S. Kaneen, whose depositions I have been informed have been taken,

and who have testified that they were interviewed by me. If I saw them, I should probably recognize them. I have not read the depositions of either, but state unequivocally that I did not tell any applicant whom I interviewed that his salary would be based upon an eight-hour day, or that it would be computed upon an hourly rate of eight hours per day, or any other hourly rate. I had absolutely no information or instructions upon which I could have made such a statement. My understanding always has been that each and every substation operator and attendant was paid a monthly salary which was full payment for all services, of any nature, which he performed, and I so informed every applicant. I do not mean that I used precisely those words, but as heretofore stated, I informed each applicant of his duties, and of the requirement of his remaining twenty-four [270] hours a day within hearing of the emergency alarm except on his days off, and that he would receive a monthly salary for his job. There was never any discussion between any applicant and me with regard to that salary being on an hourly, weekly, or any other basis, and there was never any discussion with me of overtime or standby time, except as hereinbefore stated.

As stated, I have interviewed far more applicants than Mr. Short, but from overhearing interviews between applicants and Mr. Short and between applicants and other associates in the office during the last year or year and a half when there has been additional personnel in our department, I know that Mr. Short's recent associates ordinarily made substantially the same statements to persons making application for the position of apprentice or relief substation operator and attendant.

Further deponent sayeth not.

J. D. GARRISON

Subscribed and sworn to before me this 20th day of September, 1947.

(Seal)

O. W. SCOTT,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [271]

[Title of District Court and Cause.]

AFFIDAVIT OF C. E. PICHLER IN OPPOSITION
TO MOTION FOR PARTIAL SUMMARY
JUDGMENT

State of California,
County of Los Angeles—ss.

C. E. Pichler, being first duly sworn, deposes and says:

That he is a citizen and resident of the State of California, County of Los Angeles, and Assistant Comptroller of the defendant in the action above entitled; that he has been such for approximately two and a half years, and that he has been in the Comptroller's Department of the defendant for over twenty years; that he has read the third amended complaint and the answer of the defendant thereto, filed contemporaneously herewith.

Affiant states that he is familiar with the payroll records and the methods by which defendant makes payment to its employees, [272] and that affiant has personally supervised the examination of the payroll records of the plaintiffs herein for the purpose of making certain compilations requested by counsel for the defendant in the above entitled action.

That each and all of the plaintiffs classed as substation operators and attendants or substation relief operators and attendants made out their own daily or weekly time reports and made entries thereon as overtime for the time which each one claimed to have spent in performing any service for the defendant during the night time hours as defined in the answer to the third amended complaint. That each and every said plaintiff has been paid not less than time and a half for all overtime shown on the said time reports. That each said report of each such plaintiff during all the times referred to in the third amended complaint has shown eight hours of normal working time, neither more nor less, for each day on which said plaintiff reported as working. In this connection, affiant states that wherever any of the said plaintiffs reported for work on a day, he still reported eight hours of work even though he was taken ill or had an accident and was forced to discontinue any active service during the balance of said day.

The said reports showing eight hours of normal time were accepted by the Comptroller's Department notwithstanding the fact that it was well known and understood that the normal active service of persons employed in such substation classifications at substations of the type involved in this case did not consume eight hours per day. That the eight hours per day shown by the respective plaintiffs on such time reports as normal time on each day worked as aforesaid was accepted by the Comptroller's Department because, taking the fact into account that while such employees were required to remain on the premises twenty-four hours a day they were actually [273] only performing active duties for the Company a few hours a day (substantially less than eight), and that they

were free to spend the balance of the twenty-four hours as they desired, the time worked for pay purposes was considered to be the equivalent of eight hours of active service. Affiant states that there was no other basis upon which to accept the said figures of eight hours a day normal time; that none of the said substation operators or relief operators had any scheduled hours of work, being at liberty, except for the time required to perform some certain designated services such as calling a switching center, or turning on street lights, or other similar services, to perform their services at any time during the day in any manner that they saw fit.

That at no time did any of such plaintiffs report less than eight hours' normal time for any day worked, and at no time did any of them report any time as overtime solely because they were required to remain on the premises subject to being called out for emergency active services, or any overtime except for services performed during night time hours, as defined in defendant's said answer to the third amended complaint.

That when, in January 1942, it was decided by the management to pay overtime to substation operators and attendants and relief operators for emergency services performed during designated night time hours (after 10:00 P. M. and before 8:00 A. M.), and it became necessary therefore to figure an hourly rate for overtime calculations, the Comptroller's Department used the same method as that used in calculating such hourly rate for any other employee paid by a monthly salary, viz., by multiplying the monthly salary by twelve (the number of months in a year), and dividing the result by fifty-two (the number of weeks in a year), and dividing the result thus arrived at by forty, and multiplying the result one

and a half times. As there were no scheduled hours of work of such [274] employees, and except for the time required at certain stations to telephone switching centers at certain times or to turn on street lights, they could perform their normal active services at any time, and as such active services would normally be much less than eight hours per day, and on a five day week much less than forty hours per week, the hourly rate was so figured because their job as a whole was understood to be the equivalent of eight hours of active service.

During the time that the substation operators and attendants and relief operators and attendants were required to work for six days a week because of Southern California being upon a forty-eight hour a week basis, the said employees, including any of the plaintiffs employed in that capacity in this suit, reported for the sixth day eight hours of overtime, no more or less, except where they reported emergency service during the night time hours, as those terms are defined in the answer to the Third Amended Complaint.

Further deponent saith not.

C. E. PICHLER

Subscribed and sworn to before me this 25th day of September, 1947.

(Seal)

GEORGE J. ARBLASTER,
Notary Public in and for the County of Los
Angeles, State of California.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith,
Clerk. [275]

[Title of District Court and Cause.]

AFFIDAVIT OF R. G. KENYON IN OPPOSITION
TO MOTION FOR PARTIAL SUMMARY
JUDGMENT

State of California,
County of Los Angeles—ss.

R. G. Kenyon, being first duly sworn, deposes and says as follows:

I am a vice president of the defendant Southern California Edison Company, Ltd., charged with the responsibility of handling personnel problems, and have been a vice president of that company since on or about the 19th day of January, 1945.

I have been employed by the defendant since June, 1917, and on July 1, 1942, I was made assistant vice president of the defendant company, and charged with the responsibility of handling personnel problems. Although my title has been changed, as indicated, to that of vice president, my duties have been substantially [276] the same since my first appointment as assistant vice president.

I have read the Answer of the defendant to the Third Amended Complaint served and filed contemporaneously herewith.

My principal work in handling personnel problems is in dealing with unions and with employees regarding the terms and conditions of their employment. In negotiating with the unions or discussing the terms and conditions of employment of any individual employee or group thereof, it becomes necessary to discuss the terms and conditions of their employment with the heads of the re-

spective departments, and it is part of the duties of my office to see that the terms and conditions of employment of all the various employees of the company are in accordance with any contracts which we have with any union or with any group of employees and with applicable laws and regulations.

From July 1, 1942, and during the balance of the year, I was very largely engaged in making a study of industrial relations with particular reference to the employee and labor relations problems of utility organizations as a background for the initial organization of the industrial relations department of the defendant, and of carrying on the functions to be undertaken by such department.

The first labor union that was certified as a collective bargaining agent for any of the employees of the company was the U. W. O. C., C. I. O., which was certified on or about the 3rd of August, 1943, and it was some months after that that I entered into my first negotiation with that Union for and on behalf of the defendant company.

While engaged in the aforementioned studies, I had to and did familiarize myself with the Fair Labor Standards Act and with the Interpretative Bulletins of the Wage and Hour Administrator that had been issued, including Interpretative Bulletin 13, issued in July of 1939, and its subsequent revisions. It was my opinion [277] then and has been ever since that Paragraphs 6 and 7 were and are particularly applicable to our resident type employees, and Paragraph 8 to our primary servicemen; and ever since, it has been my opinion that the method of compensation of those classes of employees as set out in the Answer to the Third Amended Complaint was in compliance with the Fair Labor Standards Act, assuming that said employees or any of them were subject to the Act.

I discussed this subject with the heads of all of the various departments affected. They indicated that they were of the same opinion, and the company at all times in good faith relied upon said Bulletin.

I was familiar with the fact that there was an issue between the Union and the Pacific Gas & Electric Company, which arose sometime in the latter part of 1942 or the early part of 1943, and that it had been certified to the National War Labor Board, and I was furnished copies by the Pacific Gas & Electric Company of the recommendation of the mediation panel and later of the decision of the Board.

The said background studies which I had made during 1942-1943 included the methods of employment and compensation of the electrical companies operating on the West Coast, including the Pacific Gas & Electric Company; it was my understanding that their methods of employment and compensation of their resident employees, that is to say, their substation operators and attendants and relief operators and attendants, their hydro station operators and their head works tenders, were substantially the same as ours. I do not mean to say that their monthly salaries were the same (that I do not remember), but that the resident employees of the two companies were employed under substantially the same conditions, that is to say, all of the said employees were paid a regular monthly or weekly salary and nothing else except the overtime for active emergency services as alleged in defendant's Answer to the Third [278] Amended Complaint served and filed contemporaneously herewith. I do not mean to say that the nighttime hours were precisely the same as those of the defendant, as there might have been some variation, but that they were, as I recollect, substantially the same.

It was my interpretation of the decision of the War Labor Board, approving the recommendations of the

mediation panel with reference to resident employees, that the proper evaluation of the jobs of such resident employees, considering their active and their inactive duties, was not greater than an employment of eight hours of active service, and that our company's arrangement with such employees for paying them a monthly salary and not less than time and a half for emergency services as alleged in defendant's Answer herein to the Third Amended Complaint, was a reasonable, proper and lawful arrangement and was not violative of the Fair Labor Standards Act. Indeed, the recommendation of the panel and its adoption by the National War Labor Board simply confirmed my interpretation and understanding of Interpretative Bulletin No. 13, which was referred to and relied upon by the Pacific Gas & Electric Company in its brief before the Board.

While I cannot remember any specific conversation with any department head, I know that I expressed these views to the various department heads during my regular discussions with them concerning terms of employment.

Had the decision of the War Labor Board as to resident employees been in favor of the contention of the Union and to the effect that such resident employees were entitled, in addition to their monthly salary and the said overtime payments for emergency services performed during said nighttime hours, as said terms are defined in the Answer of the defendant herein to the Third Amended Complaint, because of being required to remain on the defendant's property for twenty-four hours per day, to a twenty-five per cent or any other percentage as a bonus, it would have been my duty to [279] have, and I would have immediately, called that fact to the attention of the executive officers of the defendant company, including Mr. Mullendore, as the executive vice president, and to

the heads of all of the operating departments, and would also have consulted our legal department, for the purpose of having the company reach a determination as to what was to be done in the light of such decision.

For the reasons heretofore stated, I took no such steps, and the company continued the method of compensating said resident employees as set out in the Answer to the Third Amended Complaint.

I also relied upon the fact that in my background studies I had been informed that representatives of the Wage and Hour Division of the United States Department of Labor had examined our records and methods of employment and payment, and that no complaint, formal or informal, had been made, that we were in any way violating any provisions of the Fair Labor Standards Act.

I relied, and the company through me relied, upon the said Interpretative Bulletin 13 and the said decision of the War Labor Board, based as it was on the recommendation of the mediation panel and on the fact as stated that no complaint was ever made by the Administrator of the Wage and Hour Law or by any other department of the Government that the defendant company was in any way violating the Fair Labor Standards Act.

Further affiant saith not.

R. G. KENYON

Subscribed and sworn to before me this 25th day of September, 1947.

(Seal)

MEREDITH KOCH

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [280]

[Title of District Court and Cause.]

AFFIDAVIT OF WILLIAM C. MULLENDORE IN
OPPOSITION TO MOTION FOR PARTIAL
SUMMARY JUDGMENT

State of California,
County of Los Angeles—ss.

William C. Mullendore, being first duly sworn, deposes and says:

I am President of the defendant company, and have been since on or about the 20th day of April, 1945. Prior to that I was and had been since December 23, 1931, Executive Vice-President of the Company and in 1941 I was Chairman of the Statewide Industrial Committee of the State Chamber of Commerce.

On the 5th day of June, 1941, there was arranged a broadcast by the Wage and Hour Division of the United States Department of Labor in the form of questions which I propounded to Mr. John A. Stellern, Southern California Manager of the Wage and Hour Division [281] of the Department of Labor. The said questions and answers were written out beforehand and submitted to the broadcasting company for approval. Before the broadcast, Mr. Stellern and I went over the questions and answers and rehearsed them. I do not know who prepared the questions. I did not. My best recollection now is that the questions and answers were prepared by someone from the Chamber of Commerce in cooperation with Mr. Stellern and/or his assistant.

The broadcast was arranged, as aforesaid, by the Wage and Hour Division of the Department of Labor, and I be-

lieve that the local Chamber of Commerce had requested it. The object was to acquaint employees and employers generally with some idea of the workings of the Fair Labor Standards Act.

Among the questions and answers are the following:

“Mullendore: Well, how would you classify, for instance, radio stations?

“Stellern: A radio station is engaged in interstate commerce. It sends out over the air music, news and advertisements. You see, Mr. Mullendore, interstate commerce is defined in the Fair Labor Standards Act as ‘trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof’. For instance, in your company you bring electrical power from outside the State and distribute it. Every employee engaged in that phase of your business is entitled to all the benefits of the Act. I am happy to be able to tell you that your company was one of those whose records were inspected in this current program, and we found that you are operating in complete compliance with the Act.”

The underlining is mine and was not in the original script. I remember very clearly the underlined statement. I first saw it [282] when the script was submitted to me, and was very much gratified and pleased by it. I told all of the heads of our departments of it and it naturally led me to believe as Executive Vice-President of the Company that the methods of compensating all of our employees including our resident employees were correct—and by “resident employees” I mean head works tenders,

hydro station attendants and hydro station relief attendants, substation operators and attendants and relief substation operators and attendants.

I also knew of Interpretative Bulletin 13, which was originally issued in July of 1939. It was my understanding as Executive Vice-President from discussions which I had with the heads of the departments and members of our legal staff, that the bulletin was entirely applicable to all resident employees, and that we were not required to pay them anything in addition to their monthly salary for so-called standby time.

As Executive Vice-President I also knew of the dispute between the employees of the Pacific Gas & Electric Company and the Company and its reference to the National War Labor Board in 1943; and of the report and recommendation of the Mediation Panel and of the Directive Order of the Board thereon, and I discussed with other members of the Company the general effect of both.

I cannot say now whether I personally read any part of the recommendations of the Panel or of the order of the Board, but I knew the recommendations of the Panel and the decision of the Board thereon were generally to the effect that so far as resident employees were concerned (which would include substation operators and attendants, relief operators and attendants, hydro station attendants and their relief attendants, and head works tenders, although they are not required to live on company property), their employment, properly evaluated, was the equivalent of not more than eight hours per day or forty hours per week of active service. It [283] is and was my understanding generally that the conditions of employment of such employees by the Pacific Gas & Electric Company

so far as remaining on the premises was concerned, and the method of payment of the resident employees of the Pacific Gas & Electric Company were substantially the same as the employment of the same class of employees by the defendant herein.

Had the decision of the War Labor Board been to the effect that the resident employees were entitled to any different compensation, as the Company's Executive Vice-President it would have been my duty and I certainly would have taken steps to see that our Company considered the question as to whether any additional compensation was due such employees for any so-called standby time; but as Executive Vice-President of the Company I assumed from Interpretative Bulletin 13 and the recommendation of the Mediation Panel and the decision of the War Labor Board thereon and also from the radio statements of Mr. Stellern above quoted that the Company, if subject to the Fair Labor Standards Act, was complying in all respects with it; and that its method of compensation to its resident employees, and for that matter to all of its employees, was in full compliance with the Fair Labor Standards Act, if the said Act was applicable to any of the Company's employees.

This assumption was strengthened by the fact as time went on that there was no complaint made by the administrators of the Wage and Hour Act or by any other governmental agency that we were not fully complying with the Act, and as Executive Vice-President I acted and relied upon the said assumption above set forth based on each and all of the sources heretofore stated.

WILLIAM C. MULLENDORE

Subscribed and sworn to before me this 18th day of September, 1947.

(Seal)

DOROTHY M. HAWKINS

Notary Public in and for the County of Los Angeles, State of California

My Commission Expires Dec. 16, 1950. [284]

Received copy of the within named affidavits on behalf of defendant in opposition to motion of plaintiffs for partial summary judgment this 29 day of September 1947. David Sokol (SJF), Attorney for Plaintiffs.

[Endorsed]: Filed Sep. 29, 1947. Edmund L. Smith, Clerk. [285]

[Title of District Court and Cause]

DEFENDANT'S RESPONSE TO REQUEST FOR
ADMISSION OF FACTS UNDER RULE 36
OF THE RULES OF CIVIL PROCEDURE

The plaintiffs having duly served upon the defendant their Request for Admissions under Rule 36 of the Federal Rules of Civil Procedure by letter dated September 16, 1947.

I.

Defendant's Response to the First Requested Admission as genuine of Division Order #4, dated January 21, 1935, attached to the Request for Admissions as Exhibit "A":

(a) Defendant admits the genuineness of Division Order #4, [286] dated January 21, 1935, attached to the Request for Admissions as Exhibit "A," except that it contains the following typographical errors, to wit: in

Line 19, the words, "If not, if," should read, "If not, it"; and in Line 21, the words, "Two men or more Station," should read, "Two man or more Station."

Defendant admits that the said Division Order #4 as set out in Exhibit "A" with the corrections above noted was in effect during the period of this action with respect to the Southern and Long Beach Divisions only.

(b) Defendant admits the genuineness of the Operating Department Order signed by C. M. Cavner, attached to the Request for Admissions as Exhibit "B," except that it contains a typographical error in the footnote. Instead of reading as set out in Exhibit "B," the original reads, "Which includes station attendants and any other employee who may be temporarily assigned to this classification."

Defendant admits that, with the correction above noted, said Exhibit "B" as revised was in effect only from on or about January 1, 1943.

(c) Defendant admits the genuineness of Operating Department Order #A-26, dated July 1, 1935, attached to the Request for Admissions as Exhibit "C," except that it contains the following typographical error, to wit: in Line 7 thereof, the word "practive" should read, "practice." Defendant denies that there was any signature to said order.

Defendant admits that, with the correction and exception above noted, said Exhibit "C" was in effect from on or about July 1, 1935.

(d) Defendant admits the genuineness of Operating Department Order #A-30, dated June 11, 1935, attached to the Request for Admissions as Exhibit "D," except that it contains the following typographical error, to wit:

in Line 30, on the first page thereof, the word "men" should read "man." Defendant denies that there was [287] any signature to said order.

Defendant admits that, with the correction and exception above noted, said Exhibit "D" was in effect from on or about June 11, 1935.

II.

Defendant's Response to the Second Requested Admission:

(a) Defendant admits that the Order A-36 as revised on January 1, 1943, contained, among others, the paragraphs set out in the request for admission. Defendant denies that said Order A-36 as revised January 1, 1942, contained said paragraphs; admits that the said Orders A-36 as revised on January 1, 1942 and as revised on January 1, 1943, which have heretofore been offered by plaintiffs and received in evidence at the pretrial hearing as Plaintiffs' Exhibits 1 and 2, were genuine and correct, and that the copies received in evidence are true and correct copies of such documents, and that the said Order A-36 as revised on January 1, 1942 was effective from that date up until its revision on or about January 1, 1943.

Dated: Los Angeles, California, October 1, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California

Edison Company, Ltd. [288]

[Verified.] [289]

Received copy of the within Defendant's Response to Request for Admission of Facts this 1st day of October 1947. David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Oct. 1, 1947. Edmund L. Smith, Clerk. [290]

[Title of District Court and Cause]

DEMAND FOR JURY TRIAL

Comes now the plaintiffs and demand that the above entitled action be set for trial before a jury on the third amended complaint and the issues and defenses raised in the answer of defendant to said third amended complaint.

DAVID SOKOL

Attorney for Plaintiffs [291]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Oct. 6, 1947. Edmund L. Smith, Clerk. [292]

[Title of District Court and Cause]

MOTION FOR SUMMARY JUDGMENT

Comes now the defendant Southern California Edison Company, Ltd. and severally moves the court for a summary judgment in favor of the defendant against each several plaintiff upon the ground that on the entire record it appears as a matter of law that the defendant is entitled to a judgment against each several plaintiff and that there is no genuine issue as to any material fact

which, if decided in favor of the plaintiffs, or any of them, would entitle the plaintiffs, or any individual plaintiff, to a judgment.

Said motion is made and based upon all the files and records in said cause including, but not limited to, the depositions now on file, the affidavits filed by the plaintiffs in support of the motion of certain of the plaintiffs for partial summary judgment, the affidavits filed by the defendant in opposition to said motions, and the affidavits filed contemporaneously herewith in support of this motion, [293] to wit, the affidavits of G. R. Woodman, C. E. Pichler, E. N. Husher, and J. A. Stellern, and upon the points and authorities filed herewith and the points and authorities heretofore filed by the defendant in opposition to the motion of certain of the plaintiffs for partial summary judgment.

Dated: Los Angeles, California, October 22nd, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith,
Clerk. [294]

[Title of District Court and Cause]

NOTICE

To: The Plaintiffs in the above entitled action, and to
David Sokol, Esquire, their attorney:

You, and Each of You, Will Please Take Notice that
the defendant's motion for a summary judgment severally
against each several plaintiff will be called by the defend-
ant for hearing on Tuesday, the 9th day of December,
1947, at ten o'clock a. m., or as soon thereafter as counsel
can be heard.

Dated: Los Angeles, California, October 22nd, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd. [295]

Received copy of the within Notice and Motion for
Summary Judgment this 22nd day of October, 1947.
Elizabeth Watson for David Sokol, Attorney for Plain-
tiffs.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith,
Clerk. [296]

[Title of District Court and Cause]

AFFIDAVIT OF C. E. PICHLER

State of California

County of Los Angeles—ss.

C. E. Pichler, being first duly sworn, deposes and says:

I am the same C. E. Pichler who made an affidavit heretofore in opposition to the plaintiffs' motion for summary judgment. I have read the affidavit of G. R. Woodman contemporaneously served and filed herewith and state that the method of the hydro station attendants, apprentice attendants and head works tenders of reporting their time as therein stated is correct. Further, that where the report of any of said class of employees, to wit, hydro station attendants, apprentice attendants, or head works tenders, showed more than forty hours of work per week, on and since May 1, 1941, they have been paid [297] time and a half for the excess above forty hours per week.

In computing the hourly rate for the purpose of paying time and a half, the same method was used as set out in my former affidavit as to computing the hourly rate of the substation operators and attendants. The fact is that such method is the one used in computing the hourly rate for the purpose of paying time and a half as to all employees of the Company who are paid a monthly salary.

As in the case of substation operators and attendants, the time reports of the hydro station attendants and apprentice attendants and of the head works tenders, including those of the plaintiffs employed in that capacity,

showing each day not less than eight hours of service were accepted by the Company on the same theory as the reports of the substation operators and attendants were accepted, viz.: that although it was understood that as to the said hydro station attendants and apprentice attendants and the head works tenders during a large portion of the days of any month or year they would not perform eight hours of service, that the proper evaluation of their job, including their active and inactive services, was the equivalent of eight hours of active service per day.

At all times mentioned herein, each hydro station attendant and apprentice attendant, and each head works tender kept his own time records and made his own time reports, and the only records of which the Company has or has ever had of the hours worked by any of said employees, including each and all of the plaintiffs employed in such capacities, are based on their said time reports.

Affiant states that during the time the Hydro Division was operating on a forty-eight hour a week basis, pursuant to the requirements of the War Manpower Commission, the said reports of the hydro station attendants and apprentice attendants and of the head works tenders showed for the sixth day eight hours of overtime work, and as stated in the affidavit of G. R. Woodman, they also on occasion showed additional time where they had performed emergency services [298] on said day.

Affiant states that there has never been any payment to any of the said hydro station attendants, apprentice

attendants, or head works tenders, including the plaintiffs employed in such capacities, other than a monthly salary until July 1, 1947, from and after which they have been paid a weekly salary, and time and a half for such time as they reported as having worked in excess of forty hours per week, except that commencing on and about May 1, 1943, time and a half has been paid to some of said employees where they reported more than eight hours of work for any one day regardless of whether the report of said employee showed more than forty hours per week.

As to the primary service men, affiant states that each and every primary service man during all the times mentioned herein kept his own time report, and that the defendant Company has not and has never had any records of the hours worked by them except such as are based upon said reports; that the said primary service men were employed upon a definite eight hour a day shift, and except where they could not work during the day because of sickness or otherwise, they always reported eight hours. In addition thereto, the reports always showed overtime for any active service which they reported as performing after the expiration of one shift and before the commencement of another. That when the Distribution Division was operating upon a forty-eight hour a week basis because of the requirements of the War Manpower Commission, each primary service man reported eight hours of overtime for the sixth day, and no other overtime, except such overtime as he may have reported for emergency service performed before or after his shift on said sixth day; and at no time ever reported any over-

time for being required to advise his switching center after the end of his day's shift in case he left his home where he could be reached, nor did any of the primary service men at Santa Paula ever report any overtime for being required during certain days of the week to take telephone calls direct from customers in their homes, or in [299] the event of leaving their homes on said days, advising the switching center as to where they could be reached in case of an emergency.

Affiant states that there has never been paid to any primary service man, including any of the plaintiffs employed in said capacity, any compensation whatever, except for an occasional bonus paid for detecting meter tampering or reporting the names of prospects which would result in the ultimate sale of a range or water-heater, other than the monthly salary up to July 1, 1947, and on and after said date, a weekly salary and time and a half for any active service he reported as performing between shifts, as hereinbefore stated.

C. E. PICHLER

Subscribed and sworn to before me this 15th day of October, 1947.

(Seal)

BARBARA ROWE

Notary Public in and for the County of Los Angeles, State of California.

My Commission expires: June 5, 1950.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith, Clerk. [300]

[Title of District Court and Cause]

AFFIDAVIT OF E. N. HUSHER

State of California,
County of Los Angeles—ss.

E. N. Husher, being first duly sworn, deposes and says:

I am a citizen of the United States, and a citizen and resident of the County of Los Angeles, State of California, and have been such for approximately forty-five years. I am connected with and employed by the defendant, Southern California Edison Company, Ltd., as Assistant Manager of Operation, and have been such for approximately two weeks. For approximately five years prior to assuming my present position, I was Superintendent of Distribution. As Superintendent of Distribution I had charge of the operation of distributing electrical energy, and the primary service men were in my department and under my supervision, and I [301] am familiar with their duties.

The primary service man is often referred to, and has in times past in the defendant Company been referred to, as a "trouble man". His principal duties are:

Primary Service Men (Santa Paula District)—John M. Smith, W. H. Culbertson and L. A. Phinney; Huntington Beach District—A. L. Honnell, P. W. Cockrell and C. C. Prinslow: Maintains service on distribution lines and street light circuits in his district, makes emergency repairs to restore interrupted service, and patrols lines to note conditions hazardous to continuous service, restores service by replacing primary and secondary fuses. As instructed by switching center, switches and parallels circuits in unattended substations, patrols street lights in his district, an average of one night a week.

Vernon City District—J. D. Borden:

Maintains service on distribution lines and street light circuits in his district, makes emergency repairs to restore interrupted service, and patrols lines to note conditions hazardous to continuous service, restores service by replacing primary and secondary fuses. As instructed by switching center, switches and parallels circuits in unattended substations, patrols street lights in his district twice a week when on P. M. schedule and answers fire calls in Vernon City area.

Each and every primary service man employed by the defendant Company, including each of the plaintiffs employed in that capacity, were employed at all times before, prior to, and after March 19, 1942, up to the present time, on a definite eight hour shift basis per day, for which, at all times herein mentioned, they have been paid a definite monthly salary payable semi-monthly until July 1, 1947, from and after which date they have been paid a weekly salary. In a majority of the districts, the hours of the shift were from eight in the morning until five in the afternoon, [302] with one hour for lunch. In one or two districts the hours of the shift were from seven-thirty in the morning until four-thirty in the afternoon, with one hour for lunch.

At the termination of the shift, each and every primary service man was free to do what he pleased, go where he pleased, and live where he pleased. The Company did require of all of them, however, that they have a telephone in their residence, so that if, during the hours between the shift, there was an emergency for which their services were needed, they could be called by telephone, and each said primary service man was requested during certain days of the week if at the end of his shift he did not go

home or, after going home, he left his home, to advise the switching center where he was going so that in case of an emergency he could be reached. In addition to the above requirement, at Santa Paula the names of the primary service men were listed in the local telephone directory, and on the days they were required to notify the switching center where they could be reached in case they did not return to their homes or left their homes after returning, they were required when at home to take telephone calls direct from customers.

Wherever a primary service man, including each and all of the plaintiffs employed in that capacity, has, after the end of his shift and before the commencement of the shift upon the following day been called on to perform an emergency service, he has been paid time and a half for the time given to the performances of such service. At no times mentioned herein have any of the said primary service men, including each of the plaintiffs employed in that capacity, ever been paid anything other than their monthly salary and other than overtime for actual emergency services performed as aforesaid; nor has there ever been any contract or agreement to pay any said primary service man, including each of the plaintiffs employed in that capacity, anything other than his monthly salary and time and a half for emergency services performed be- [303] tween shifts; nor has there been any custom or practice in any of the districts to pay to any primary service man anything other than his said monthly salary and time and a half for the actual time reported by him in the performance of actual active emergency service between shifts.

If the requirement of the defendant hereinbefore set out that each primary service man at the end of his shift if he does not return to his home, or after returning

should leave his home, advise the switching center where he could be reached in case of an emergency, amounts to a service, or in case of primary service men at Santa Paula, the further requirement that during certain days of the week they take calls direct from customers, amounts to a service, there has been no payment made by the Company therefor to said primary service men other than a monthly salary; nor has there been any contract to make any payment therefor, nor has it been paid for by custom or practice in any district, or at all.

Each and every primary service man, including each of the plaintiffs employed in said capacity, at all times mentioned herein has made out his own time report, and the only records which the Company has, or has ever had, of the hours they worked are based on reports made out by said primary service men, including each of the plaintiffs employed in such capacity. Said time reports have a space for overtime, and none of the plaintiffs employed as primary service men, or any other primary service man, has at any time ever reported any overtime based upon being required to advise his switching center where he could be reached if he either did not return to his home at the end of his shift or, after returning home, left his said home; nor by any service man employed at Santa Paula being required at any time to answer telephone calls in his own home from customers.

During the time that the Distribution Division of the defendant was upon a forty-eight hour a week basis, pursuant to [304] the requirement of the War Manpower Commission, each and every primary service man, including each and all of the plaintiffs employed in said capacity, reported for the sixth day eight hours of overtime and no more, unless he was called on during the sixth day

either before commencing or after the termination of his shift, to perform an emergency service.

E. N. HUSHER

Subscribed and sworn to before me this 14th day of October, 1947.

(Seal)

DOROTHY M. HAWKINS

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith, Clerk. [305]

[Title of District Court and Cause]

AFFIDAVIT OF G. R. WOODMAN

State of California

County of Los Angeles—ss.

G. R. Woodman, being first duly sworn, deposes and says:

I am a citizen of the United States and a resident of the County of Los Angeles, State of California, and employed by the defendant Southern California Edison Company in the capacity of Superintendent of Hydro Generation.

I became Hydro Engineer of the Hydro Division in March, 1938, and remained such until July 1, 1942, when I became Assistant Superintendent of Hydro Generation. On July 1, 1943, I was Acting Superintendent of Hydro Generation, and on July 1, 1944, I was made Superintendent of Hydro Generation and have remained such ever since. [306]

I am, and during the times mentioned have been, familiar with the employments and duties of the various classes of employees in said Hydro Division.

(1) Hydro Station Attendants

At the present time, and since March 19, 1942, and prior thereto, our apprentice hydro station attendants in a majority of cases have been taken from the utility crews, but occasionally we have employed as apprentice operators persons not previously connected with or employed by the Company. An apprentice operator is trained at a hydro station under an experienced operator, and the Station Chief is responsible for his training. As there becomes a need for a hydro station attendant, the place is filled by a qualified apprentice operator.

From and prior to March 19, 1942, Until October 27, 1945, each plaintiff hydro station attendant and apprentice attendant was required to live upon the Company's premises in a house which he rented from the Company. At certain of such hydro stations, which are usually spoken of as "canyon locations" or "hydro locations," there would be outlying hydro stations which would be attended to by one crew. As to all such locations the places of residence of the attendants of apprentice attendants would be located adjacent to the main station, with alarm bell extensions to the residences. During the times above mentioned, to wit, from and prior to March 19, 1942, until October 27, 1945, each of the said plaintiff hydro station attendants and apprentice attendants was required, except when traveling between stations or inspecting remote facilities, during certain days of the week to remain close enough to the main station house or his residence to be able to hear an alarm bell in case his services were

needed in the event of an emergency. The requirement of his so remaining in hearing distance of said alarm, for brevity of designation will hereafter be referred to as "standby time" or [307] "standby." Such standby time was not required of any of the plaintiffs more than five days per week, except when the Hydro Division was operating on a 48-hour week pursuant to the requirement of the War Manpower Commission, and in most stations less than five days per week. During the period of time that the said Hydro Division was operating on a 48-hour week, standby time was never required of any of said plaintiffs more than six days per week, and in most stations less than six days per week.

The said plaintiff M. H. Huntington is an exception to the foregoing statement. He was employed at Borel and at Kern River Station No. 1 during the period September 16, 1942, to October 31, 1944. At both of said stations the station attendants worked upon scheduled eight-hour shifts and then, during certain days, were required to remain so near their residences as to be able to answer an alarm in case of an emergency service. This was worked out by schedule so that each of the station attendants was required to so remain on or near his premises for less than five days per week. No other plaintiff in this case, or in the case of Drake, et al., v. Southern California Edison Company, Ltd., numbered in this court 5544-WM, worked at either of said stations.

During the interval commencing October 27, 1945, and ending May 1, 1947, the defendant converted all of its hydro stations to a scheduled shift basis, and as each station was placed on such basis the attendants were placed upon a scheduled eight-hour shift, at the end of which

time they were at liberty to go when and where they pleased and to do what they pleased. In the event of an emergency arising after their scheduled shift, such attendants, if they were available, were called out to do emergency work, in which event they were paid not less than time and a half for such call-outs.

Attached hereto as Exhibit "A" and made a part of this affidavit is a schedule showing the date that each of the said hydro stations was placed upon a shift basis. [308]

Prior to and since March 19, 1942, and until the particular station at which they operated was placed on a scheduled shift basis, said hydro station attendants, as stated, lived in Company houses and were privileged to have their families live with them, and, so far as I now recall, each and every hydro station attendant did have his family live with him; if they did not, it was purely because, for personal reasons, he did not desire to do so.

The normal duties of a hydro station attendant, prior to the station at which he worked being converted to a shift station, were periodically to inspect the hydro station and appurtenant facilities and to observe and report upon any unusual conditions, to maintain a station log, periodically to check the operation of the station and inter-plant alarm circuits, to clean and lubricate the station equipment, and, on orders, to start up and stop the machines and do any special switching, and to take care of the station, and the station and cottage grounds.

The time required of the various hydro station attendants and apprentice attendants to perform their active duties as above outlined would vary at each station and would vary at the same station depending upon conditions. Also the station grounds to be maintained were not the

same, and some would require more time to keep up than others. Also the size of the stations and the number of generating units would vary, but on an average throughout the year the normal active duties of each hydro station attendant and apprentice attendant could be performed in from four to eight hours per day, and during the year would, except as to Kern and Borel Stations, heretofore mentioned, average substantially less than eight hours per day.

Prior to each station going upon a shift basis, the station attendant and apprentice attendant, if there was one, had no schedule of fixed hours in which to perform their services, but by custom they were normally performed during daylight hours. At any time, the attendant, if he desired, for personal reasons, could [309] mow his lawn or do any work of servicing the equipment or cleaning up the station either in the early morning hours or in late evening. However, one of the attendants at each station which would include an apprentice attendant, if there was one, was required, unless prevented by a break in a telephone line, or by emergency service calling him from the station or other unusual duties, to make a morning and afternoon call to the switching center.

The specific time for the normal first call in the morning and for the last call in the afternoon would vary at the different stations, and ordinarily the first morning call would not be made later than 8:00 in the morning and the last afternoon call usually not later than 4:30 or 5:00 in the afternoon, although in periods when there were no storms or emergencies an attendant or apprentice attendant might make his last call as early as 2:30 or 3:00

in the afternoon. During the time that the attendant or apprentice attendant was not actively engaged, he could do as he saw fit and engage in any activities that he saw fit to engage in, and, except and until the station at which he was working was placed on a scheduled shift basis, he was required on certain days of the week, as aforesaid, to remain close enough to his residence or the station house to hear an alarm bell in case his services were required during an emergency.

Except in the case of the plaintiff M. H. Huntington, hereinbefore specifically dealt with, since March 19, 1942, and prior thereto, there have always been two or more men assigned for each attended location (consisting of a station or group of stations), and standby time was at all times required of one of such men. The result was that on certain days each attendant would be free to go where he pleased, but by custom did not leave the immediate vicinity of his residence without obtaining permission of the station chief or ascertaining that there would be at least one attendant remaining in the vicinity of the alarm bell in the event of an emergency.

During all times mentioned in this affidavit from and after [310] May 1, 1941, each and every hydro station attendant and apprentice attendant, including each and every one of the plaintiffs so employed, made out his own time report upon forms furnished by the Company, and the only records which the Company has, or has ever had, of hours worked by each said hydro station attendant and apprentice attendant, including each said plaintiff employed in said capacity, are based on their said time reports.

During all of the times herein mentioned, each of the said hydro station attendants and apprentice attendants, including each of the said plaintiffs employed in said capacities, has customarily reported not less than eight hours of work upon any day for which he reported working, regardless of whether he had performed eight hours of active service or not, and in addition thereto has reported any active service beyond eight hours; and in this connection has always reported as additional hours above the eight any active time consumed in performing any active service before the normal time for the first report to the switching center and after the last afternoon report to the switching center except as shown in example (3) hereinafter set forth. To illustrate the method of computing time, I will give three examples: (1) if a hydro station attendant or apprentice attendant was to make his first call to the switching center at 7:30 A.M., he would not report having performed more than eight hours of service, no matter what he was called on to do between then and 4:30 P.M., this regardless of whether he made his last call prior to 4:30 P.M. If, however, after 4:30 P.M. he was called upon to perform some active emergency service taking, say, one, two or three hours, he would report for said day as having rendered nine, ten or eleven hours of service, regardless of whether between the time of making his first call to the switching center at 7:30 A.M. and his last call at 4:30 in the afternoon, he had performed eight hours of active service, or any active service. (2) If the hydro station attendant or apprentice attendant had been called on for an emergency service, say, at five or six o'clock in the morning and had been occupied up until about 7:30 or 8:00 A.M., he would do one of two things: either report [311] for that day ten or eleven

hours of work, regardless of whether after 7:30 or 8:00 A.M. he had performed any active service or not, or else discontinue all active duties by 2:30 or 3:00 P.M. making his last call at that time and reporting eight hours for said day regardless of whether after 5:00 or 6:00 A.M. he had performed eight hours of active service or not. (3) If he had been called out, say, at 1:00 in the morning and continued such active duty until, say, 9:00 or 10:00 in the morning, he would usually be relieved for the balance of the day, in which event he would report eight or nine hours of service. If, however, he was not relieved, and assuming he normally made his first call at 8:00 in the morning, he would report fifteen or sixteen hours for said day, depending upon whether his call-out started at 1:00 or 2:00 in the morning, and this regardless of the amount of active duties performed after 8:00 in the morning or whether he performed any.

Prior to May 1, 1943, he was paid overtime only when his weekly report showed he had worked more than forty hours for that week. On or about May 1, 1943, at Kern River No. 1 Hydro Station, the defendant company commenced paying overtime for some work reported in excess of eight hours for any one day, even though the weekly report did not show more than forty hours per week, and that practice was gradually extended from station to station until, on or about October 1, 1945, the practice of paying overtime for all work reported in excess of eight hours for any one day, regardless of whether more than forty hours for the week was reported, was in effect at all hydro stations; but I am unable to state at the time of making this affidavit the precise time it went into effect at each of the stations other than Kern River No. 1.

I reiterate the statement that at all times mentioned in this affidavit from on or about May 1, 1941, the company has paid overtime at the rate of not less than time and a half for all work reported by any hydro station attendant or apprentice attendant in excess of forty hours per week.

Affiant states that each hydro station attendant or apprentice attendant, including each and all of the plaintiffs employed [312] in said capacities, was paid a monthly salary until July 1, 1947, from which time they have been paid a weekly salary. Affiant states that on and before July 1, 1947, each and all of its said stations had been placed on a shift basis, as hereinbefore stated, and, therefore, will not again refer to the said weekly salary but only to monthly salary. Affiant states unequivocally that no other compensation was ever paid to any hydro station attendant or apprentice attendant, including each of the plaintiffs employed in said capacity herein, except said monthly salary and overtime for work which he reported in excess of forty hours per week, and after May 1, 1943, for work reported in excess of eight hours per day as hereinbefore stated.

Affiant states positively and unequivocally that there was never any payment made to any station attendant or apprentice attendant other than his monthly salary for any standby time required of him as said term "standby time" has been hereinbefore defined, nor was there any payment for said standby time, other than his said monthly salary by any custom or practice at any of the said hydro stations, or at all.

Affiant states that, as aforesaid, the normal active duties of the average hydro station attendant and apprentice attendant, including each and all of the plaintiffs employed

in such capacities, would consume between four and eight hours per day; that notwithstanding this fact, as aforesaid, each said hydro station attendant and apprentice attendant, including each of the plaintiffs employed in said capacities, customarily reported not less than eight hours for any day on which he reported working. Affiant states that such reports were accepted, notwithstanding the fact that the Company well knew that on many days the hydro station attendant and apprentice attendant reporting eight hours performed less than eight hours of active service. Reports showing a uniform eight hours of service, except in the event of reporting overtime in the manner hereinbefore set out, were accepted by the Company on the theory that the active [313] duties and inactive duties hereinbefore defined as standby time were the equivalent of a job of not to exceed eight hours of active service. In other words, each hydro station attendant and apprentice attendant was employed to do a certain job which involved the performance of active duties and standby time, as hereinbefore defined and explained, during certain days of the week. For that job, as a whole, he was paid and accepted a fixed monthly salary, paid semi-monthly, and when he reported any overtime, the time and a half rate was computed on the theory that he was being paid for eight hours of active service per day, even though during the year or during any ordinary and average month, except at Kern River No. 1 and Borel Hydro Stations, the station attendant and apprentice attendant would not perform eight hours of active service during many of the days of the year or month.

As stated, none of the plaintiffs in the above case or in the case of Raymond F. Drake v. Southern California Edison Company, Ltd., numbered in this court 5544-WM

Civil, were employed at either Kern River No. 1 or Borel Hydro Station, other than the plaintiff M. H. Huntington. Affiant states, however, that said plaintiff Huntington and every other hydro station attendant or apprentice attendant employed at either Kern River No. 1 or Borel Hydro Station was paid a definite monthly salary and was not paid anything in addition thereto for the standby time required of him as hereinbefore defined, and that there was no contract or custom to pay otherwise for such standby time. He was paid time and a half, however, whenever he reported performing work in excess of forty hours per week, reporting any active service which he was called upon to perform between shifts as overtime.

During the period that said hydro station attendants worked six days a week instead of five, each station attendant, including each plaintiff employed in that capacity, customarily reported eight hours of overtime for each such sixth day worked, and no additional [314] overtime unless he performed some active emergency work which was reflected on the time report as overtime in addition to the eight hours shown.

The hydro apprentice attendants usually and normally performed the same work as the hydro station attendants, except that they would be under the supervision of a trained attendant until the apprentice was considered to be duly qualified, and live upon the Company's property, and were permitted to have their families live with them, and, as far as I know, each said apprentice did have his family living with him.

(2) Head Works Tenders.

Employees of the head works tender classification usually were drawn from our utility crews, and quite often were older men transferred from maintenance crews at their request because of seeking lighter duty jobs. Occasionally, however, some were hired for that purpose directly, and in such cases they usually were local residents of the community.

Head works tenders were required to live within fifteen to twenty minutes' walking distance from their homes to the head works, and also were not permitted to live where the road thereto might be so obstructed in case of stormy weather as to make their walking or other means of travel to the head works any longer. This usually resulted, of necessity, in living in a Company house, which the employee rented from the Company, and was privileged to have any member of his family live with him.

The normal duties of a head works tender would be to attend to and operate equipment installed at intakes of hydro plants for control of water flow, patrol water-flow lines to inspect for leaks, breaks and general conditions, service and lubricate gate mechanism, clean trash rack and sluice sand; maintain yard and local trails, make simple oral reports of weather, flow conditions and related work [315] as required. These duties would normally take from four to eight hours a day, depending upon the location of their work. However, at Kaweah No. 1, the plaintiff Griffes' duties would normally take him between seven and eight hours per day.

In addition to their active duties hereinbefore described, each head works tender, including each plaintiff employed in that capacity, when not engaged in any of the active

duties hereinbefore described, was free to indulge in any activity which he desired except that until the head works at which the attendant was employed was placed on a shift basis, on certain days during the week he was expected to remain sufficiently near his residence as to be within hearing of an alarm bell in case he was needed for emergency service, unless he obtained permission from the station chief to leave the vicinity. The station chiefs usually granted permission when requested, for a head works tender to leave his residence unless conditions were such as to indicate the probabilities of requiring emergency service. For brevity of designation, the requirement of the head works tender when not engaged in active duty to remain sufficiently near his residence to hear an alarm bell will be referred to as "standby time." On or about September 14, 1945, the Florence Lake head works, Huntington Lake head works and Shaver Lake head works were placed on a shift basis, thereafter defendant's other head works were from time to time placed on a shift basis as set out and shown on Exhibit "A" attached hereto and made a part of this affidavit. On and after any head works was placed on shift basis, the head works tender at said location worked an eight hour shift five days a week. At the end of his shift he was free to do what he pleased, go where he pleased without any restraint whatever. In case an emergency occurred after the expiration of his shift and which required the services of the head works tender, he would be called and if he responded to said call, he was paid not less than time and a half for time he reported [316] as having worked in response to said call.

During all of the times mentioned herein, each and every head works tender, including each and all of the plaintiffs employed in that capacity, has made his own

time reports upon forms furnished by the Company, and the only records which the Company has, or has ever had, of hours worked by each said head works tender, including each said plaintiff employed in said capacity, are based on their said time reports. In said time reports each and every head works tender, including each and all of the plaintiffs employed in that capacity, has never reported any standby time as overtime, and each of the said head works tenders, including each of the plaintiffs employed in such capacity, at all times herein mentioned, has customarily reported not less than eight hours of work for any day on which he reported working, notwithstanding the fact that, as aforesaid, on a great many days his active duties would occupy less than eight hours of work, and the said time reports of the said head works tenders, including those of each plaintiff, have been accepted by the Company on the theory that the standby time and the active duties were the equivalent of a job not exceeding eight hours of work; in other words, that the said head works tenders, the same as the hydro station attendants, were employed to do a certain job which involved the performance of active duties, and during certain days of the week, standby time, as said term is hereinbefore defined, and for that job as a whole they were paid and accepted a fixed monthly salary payable semi-monthly up until July 1, 1947, from and after which they have been paid a weekly salary, and at all times mentioned herein from and after May 1, 1941, have been paid not less than time and a half for any work reported in excess of forty hours per week.

None of the said head works tenders, including the plaintiffs employed in that capacity, have ever been paid

anything in addition to their monthly or weekly salary for standby time as [317] hereinbefore defined, and there has been no contract, oral or written or otherwise, at any time to pay said head works tenders, or any of them, including any of the plaintiffs employed in that capacity, anything in addition to the monthly and weekly salary for such standby time; nor has there been any custom or practice at any of the places where the head works tenders were employed or resided to pay anything in addition to the said monthly or weekly salary for standby time. From and after May 1, 1941, each and every head works tender, including each and every plaintiff employed in that capacity, in addition to his monthly salary, has been paid not less than time and a half for any services reported to have been performed in excess of forty hours per week, the head works tenders computing and reporting the amount of time worked in the same manner precisely as the said hydro station attendants, as hereinbefore set out.

None of the plaintiff head works tenders, including any of the plaintiffs employed in that capacity, at any time have been paid any compensation other than their said monthly salary and not less than time and a half for any services reported by them in excess of forty hours per week, and during the time the said head works tenders, including each of the plaintiffs, were employed for six days a week, they customarily reported eight hours of overtime regardless of whether they actively performed eight hours of service and did not report any other overtime unless performing some emergency services, as hereinbefore set forth and explained.

G. R. WOODMAN

Subscribed and sworn to before me this 13th day of
October, 1947.

(Seal)

DOROTHY M. HAWKINS

Notary Public in and for the County of Los
Angeles, State of California.

My commission expires December 16, 1950.

EXHIBIT "A"

Standby Elimination
Hydro Generation Division

<u>Location</u>	<u>Date Standby Eliminated</u>
Kern River No. 3 Hydro Plant	10-27-45
Kern River No. 1 Hydro Plant	2-16-46
Kaweah Hydro Plants	4-1-46
San Antonio Canyon Hydro Plants	6-12-46
Borel Hydro Plant	6-15-46
Mill Creek Canyon Hydro Plants	7-22-46
Tule River Hydro Plant	9-1-46
Lytle Creek Canyon Hydro Plants	1-1-47
Santa Ana Canyon Hydro Plants	5-1-47
Florence Lake Headworks	9-14-45
Huntington Lake Headworks	9-14-45
Shaver Lake Headworks	9-14-45
Tule River Headworks	5-1-46
Kaweah No. 1 Headworks	5-15-46
Kaweah No. 3 Headworks	5-15-46
Borel Headworks	7-1-46
Mill Creek No. 3 Headworks	7-22-46
Kern River No. 3 Headworks	8-1-46
Kern River No. 1 Headworks	8-9-46
Lytle Creek Headworks	12-6-46
Santa Ana No. 1 Headworks	5-1-47

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith,
Clerk. [319]

[Title of District Court and Cause]

AFFIDAVIT OF J. A. STELLERN

State of California

County of Los Angeles—ss.

J. A. Stellern, being first duly sworn, deposes and says:

I am a citizen of the United States and a resident of the County of Los Angeles, State of California, residing at 112 North New Hampshire, in the City of Los Angeles. I am now in private practice for myself in Labor Relations.

In 1933 I entered the employment of the Government of the United States as Director of the United States Employment Service for the State of California. After four years of employment with the Employment Service I was transferred to the Social Security Board. In the month of May, 1940, I was transferred to the Wage-[320] Hour Public Contracts Division of the United States Department of Labor as Manager for Southern California and the State of Arizona. I remained in that position until November, 1946, when I resigned to enter private practice. My office as Manager of the Wage-Hour Public Contracts Division was in Los Angeles. I reported to the Regional Director of the Administrator of the Fair Labor Standards Act, whose office was in San Francisco.

It was my duty as the deputy of the Administrator of the Act and Manager of the Wage-Hour Public Contracts Division to endeavor to obtain as much compliance by em-

ployers with the Act as possible. It was our practice to inspect as many employers as possible and, where we found any employer indulging in a practice that we thought violative of the act, to call his attention to it and to bring about a correction. If he refused to correct it, it was my duty then to bring the case immediately to the attention of the attorney for my Division to have either a civil or criminal proceeding instituted.

It was, of course, a physical impossibility to inspect all employers in an area as large as this, but we tried to inspect all of the larger employers, and the Edison Company was inspected by Mr. Harold Perkins. The records of the Division not being open to me, I could not be certain of the date, but my best recollection is it was in April or May of 1941. In any event, I know that it was a short time prior to the broadcast between Mr. Mullendore and myself which was on June 5, 1941.

After completing his review of the records of the Edison Company, Mr. Perkins reported to me that in his opinion the Company was acting in full compliance with the Act. I remember distinctly that he and I discussed the Company's method of payment to their so-called resident employees, that is, those who were required to stay twenty-four hours a day for a certain number of days each week either at power-houses, station-houses or substations, and he and I decided that its method of payment was in compliance with the Act.

The broadcast which I have heretofore referred to was ar- [321] ranged by me. I have read a copy of the affidavit of Mr. Mullendore heretofore filed, and state that

he is in error in assuming the broadcast was suggested or arranged by the Chamber of Commerce. The idea of the broadcast had been suggested by Mr. Chambers who came here from Washington, and was a public relations man for the Administrator. He and I discussed it, and he thought it would be a good idea as being informative to employers and employees alike, and it was decided on. I arranged for the broadcast, the time for which was given free to the Division by the Broadcasting Company. The script was prepared in my office by Mr. Chambers and revised by me. Actually, I think Mr. Chambers wrote the script.

I had selected Mr. Mullendore as the man to ask the questions, not because he was connected with the Edison Company, but because he was at that time President of the State Chamber of Commerce. I informed Mr. Chambers, however, that Mr. Mullendore's Company had been examined and had been found to be operating in full compliance with the Act, and the statement in the script of the broadcast, "I am happy to be able to tell you that your Company was one of those whose records were inspected in this current program, and we found that you are operating in complete compliance with the Act", was written into the script by Mr. Chambers from information which I had supplied to him, which, in turn, was based on the report which Mr. Perkins had made to me. While I cannot remember the details of it now, I do remember that Mr. Perkins and I had discussed the situation in detail, and that both of us had reached the conclusion that the Company in all of its departments was operating

in compliance with the Act. The broadcast was given on the 5th day of June, 1941, from 6:45 P. M. to 7:15 P. M., as per the script which had been prepared, and a copy of which is attached to this affidavit as Exhibit "A" and made a part hereof.

Naturally, before going on the air, I went over the script with Mr. Mullendore. [322]

The Edison Company was again inspected under my direction I believe in 1943. That inspection was made as a result of a complaint which we received. The files of the Division no longer being available to me, I cannot state other than my best recollection. I cannot now recall whether the complaint came from a union or from some individual, but as I recollect, the complaint was based on the fact that resident employees were not receiving proper overtime. Mr. Harold Perkins again made the inspection, and he and I talked it over again and, as I remember, at that time we reached the definite conclusion that the Edison Company's method of compensating employees did not violate the Act.

Further deponent saith not.

J. A. STELLERN

Subscribed and sworn to before me this 8 day of October, 1947.

(Seal)

C. E. CULVER

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires June 29, 1950. [323]

EXHIBIT "A"

U. S. Department of Labor
Wage and Hour Division
Los Angeles, California

Radio Program Presented by Mr. William C. Mullendore, Executive Vice-President of the Southern California Edison Company, and Chairman of the Statewide Industrial Committee of the California State Chamber of Commerce, and Mr. John A. Stellern, Southern California Manager, Wage and Hour Division, U. S. Dept. of Labor, Over Radio Station KFVB, Hollywood, California, Thursday June 5, 1941, From 6:45 P. M. to 7:00 P. M.

Announcer: The program which follows comes to you under the auspices of the Wage and Hour Division of the U. S. Department of Labor. Speakers are Mr. William C. Mullendore, Executive Vice-President of the Southern Calif. Edison Company, and Chairman of the Statewide Industrial Committee of the California State Chamber of Commerce, and Mr. John A. Stellern, Southern California Manager of the Wage and Hour Division. Mr. Mullendore—

Mullendore: Good evening, Ladies and Gentlemen. All of you are familiar with the general objectives of the Fair Labor Standards Act, commonly known as the Federal Wage and Hour Law. This Act was passed by the Congress in 1938, and provides that no worker employed in interstate commerce, or in the production of goods [324] for interstate commerce, shall be paid less than 30¢ an hour, and that after 40 hours have been worked in any workweek, that he shall receive overtime at the rate of one and one-half times his regular hourly wage. Mr.

Stellern tells me that when the Act was passed there was naturally a flood of complaints. For more than 18 months after it became effective on October 24, 1938, the inspection staff was inadequate to keep up with the complaint load. Consequently, a back log of complaints developed. In California at one time there were more than 2000 complaints which the Division had been unable to investigate. Within the past month the Wage and Hour Division has concentrated on cleaning up these old complaints. More than 400 employers in Los Angeles have been called to the Division offices with their records. I shall now ask Mr. Stellern some questions concerning the results of this special program of compliance. Mr. Stellern, among these 400 employers, how many were found to be in serious violation of the Act?

Stellern: I am happy to tell you, Mr. Mullendore, that indications are that only 117, or approximately one-fourth, of these old cases show indications that restitution will have to be paid.

Mullendore: Approximately how many employees are involved in those cases?

Stellern: There are 2470 employees in the 117 establishments.

Mullendore: How many of them will have to make payments of restitution?

Stellern: Every one of them.

Mullendore: Well, just about how much will that amount to in round figures? [325]

Stellern: Our preliminary computations—you understand, of course, that we shall have to make plant inspections in 109 of these cases—show that \$50,700.00 is due these 2470 employees.

Mullendore: What about these other 290 cases, Mr. Stellern?

Stellern: Many of them were found not to be engaged in interstate commerce, or in the production of goods for commerce, Mr. Mullendore. For instance, there was one man who conducts a strictly retail business. Our inspection of his books disclosed that for more than a year he has strictly complied with the law, under the impression that his employees were covered by its provisions.

Mullendore: Well, did you find any who sincerely thought they were not covered who were in violation?

Stellern: Yes, sir. I recall one at the moment. This was a small firm manufacturing and repairing automobile batteries for local use. The proprietor was sure that he did not come under the Act. However, our inspection of his books disclosed that the dollar volume of junk lead which he sold in interstate commerce exceeded his sales of batteries.

Mullendore: Among these violations, Mr. Stellern, do you find many who are deliberate in their attempts to evade the Act.

Stellern: A very small percentage. In fact, taking the nation as a whole, we have found that most American business men want to be fair in their dealings with their employees. More than 85% of the cases now marked "Closed" in our files are there from private settlement, rather than the necessity of litigation. Then, of course, there are some who are so convinced that they are not covered by the Act that they are willing to take the [326]

case to court. We have no quarrel with this element, particularly if we are convinced of their sincerity. The element to whom we give no consideration is that 3% or 4% which you will find in any industry who are willing to take competitive advantage at the expense of their workers' pay envelopes. This is the element which falsifies records, which in some cases have actually maintained two sets of books—one for the Wage and Hour Inspector, and one for the actual plant records.

Mullendore: How do you uncover such tactics?

Stellern: Usually we know something about such a concern from the complaint, or we certainly develop it in our interviews with employees. You understand when we call these employers down to our office with their records, we do not close the case merely after talking to them. We confirm what they say by interviewing their employees. If there is any discrepancy in the statements of the employer and the employee, we make a thorough plant inspection which usually develops the truth.

Mullendore: Are there not some exemptions under the Act, Mr. Stellern?

Stellern: Yes, sir. Congress specifically exempted several classes of employees. For instance, farmers are completely exempt from both the wage and hour provisions of the Act. Likewise, employees of purely retail or local service establishments are exempt.

Mullendore: Just how do you define a retail establishment?

Stellern: A retail establishment is a store or service station which makes a retail sale to an individual for his use, that is the ultimate consumer. For instance, grocery [327] stores, department stores, local hardware stores, we regard as retail establishments.

Mullendore: What about service establishments?

Stellern: Well, we would regard a restaurant, a laundry, or local gasoline service station, or a hotel as a service establishment.

Mullendore: Well, how would you classify, for instance, radio stations?

Stellern: A radio station is engaged in interstate commerce. It sends out over the air music, news and advertisements. You see, Mr. Mullendore, interstate commerce is defined in the Fair Labor Standards Act as "trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof." For instance, in your company you bring electrical power from outside the State and distribute it. Every employee engaged in that phase of your business is entitled to all the benefits of the Act. I am happy to be able to tell you that your company was one of those whose records were inspected in this current program, and we found that you are operating in complete compliance with the Act.

Mullendore: Well, Mr. Stellern, generally speaking, how does Southern California compare with other sections of the Country in relation to the Fair Labor Standards Act?

Stellern: Our office here, Mr. Mullendore, is part of Region 15, which includes the States of Washington, Oregon, California, Arizona, Nevada, Utah and Idaho. Of course, Southern California is the most densely populated area in the Region. Also, I am reluctant to tell you, in numerous industries here the wage levels are not as [328] high as they are even in Northern California and other sections for the same type of work. Many of these, of course, are in the sweated industries, such as garment making. The fact remains, however, that almost 50% of the complaints received in Region 15 came from Southern California.

Mullendore: Mr. Stellern, what is the policy of the Wage and Hour Division in bringing about mass compliance in such a situation as you describe in Southern California?

Stellern: We seek voluntary compliance from employers, Mr. Mullendore. I am glad you give me this opportunity to state that in this special program, as well as generally, we are not conducting a punitive campaign against employers. General Philip B. Fleming, Administrator of the Wage and Hour Division, has frequently said that if he started out to enforce this Act he would need an army of 10,000 inspectors. We have less than 10% of that number throughout the United States, Hawaii and Alaska, which, by the way, are also in Region 15. We therefore seek the cooperation of employers. We assume that they intend to obey the Act and we give them every opportunity to come into compliance. The only

type of employer who will not find us cooperative is one who falsifies his records or is defiant and wilful in his violations. We usually refer that type to the Legal Branch for either criminal or civil procedure.

Mullendore: Well now, Mr. Stellern, do you take sides between an employer and an employee.

Stellern: No, sir, we are only after the facts. We are not organizers for unions, nor do we preach the philosophy that the employer is always right. Rather, we go [329] down the middle of the road and try to get the facts. An employer seeking information concerning his responsibilities under the Act is just as welcome in my office as an employee who is a victim of an unfair employer.

Mullendore: Thank you very much, Mr. Stellern. You have answered several questions which have been on my mind, and I feel they are similar to questions in the minds of many employers in this area.

Announcer: The program to which you have just listened was presented by Mr. William C. Mullendore, Executive Vice-President of the Southern California Edison Company, and Chairman of the Statewide Industrial Committee of the California State Chamber of Commerce, and Mr. John A. Stellern, Southern California Manager of the Wage and Hour Division, U. S. Department of Labor. [330]

Received copy of the within Affidavits of G. R. Woodman, E. N. Husher, C. E. Pichler, and J. A. Stellern, in support of defendant's Motion for Summary Judgment this 22nd day of October 1947. Elizabeth Watson for David Sokol, Attorney for Plaintiffs.

[Endorsed]: Filed Oct. 22, 1947. Edmund L. Smith, Clerk. [331]

[Title of District Court and Cause]

INTERROGATORIES PROPOUNDED BY
DEFENDANT TO PLAINTIFFS

To the Plaintiffs in the Above Entitled Action, and to
David Sokol, Esq., Their Attorney:

Please furnish written answers, under oath, to the
following interrogatories:

Interrogatories Numbered 1 Through 28, Immediately Following, Are Applicable Only to the Plaintiffs Who Are Alleged in Paragraph III of the First Cause of Action in the Third Amended Complaint to Have Been Employed by the Defendant as Primary [332] Service Men; and the Use of the Word Plaintiffs in Said Interrogatories is Intended to be Limited Accordingly.

Interrogatory No. 1:

Were any of the plaintiffs Paul W. Cockrell, J. D. Borden, John M. Smith, W. H. Culbertson, A. L. Honnell, L. A. Phinney and Clarence C. Prinslow during any of the times of their employment as primary service men on and after March 19, 1942, employed except upon a scheduled eight hour shift for each day of their employment?

The foregoing question does not deal with or require an answer as to overtime of any nature, if any, but simply as to whether the employment of any one of said plaintiffs was on other than a definite eight hour shift for each day he worked.

Interrogatory No. 2:

If the answer to the foregoing Interrogatory No. 1 is that any of the plaintiffs named in said interrogatory at any time on or after March 19, 1942, were employed on other than a scheduled eight hour shift for each day worked, state which of said plaintiffs was so employed, the station or place at which he was so employed, and the conditions of his employment so far as time and method of his work were concerned.

Interrogatory No. 3:

Was any service ever required of the plaintiffs Paul W. Cockrell, J. D. Borden, A. L. Honnell and Clarence C. Prinslow, or any of them, during any of the times they were employed from and after March 19, 1942, as primary service men, after the end of their eight hour shift, other than the performance of emergency services, as that term is defined in the answer to the third amended complaint, and other than being required on certain days of the week in case they did not go [333] home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 4:

If the foregoing Interrogatory No. 3 is answered in the affirmative, state names of said plaintiffs from whom any service was required after the end of their eight hour shift, other than emergency services as defined in the answer to the third amended complaint, and other than being required on certain days of the week, in case they did not go home after the end of their shift, or after

going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency; and state the character of such service.

Interrogatory No. 5:

Was any service ever required of the plaintiffs W. H. Culbertson, John M. Smith, and L. A. Phinney during any of the times they were employed as primary service men from and after March 19, 1942, after the end of their eight hour shift, other than the performance of emergency services as that term is defined in the answer to the third amended complaint and other than being required on certain days of the week if at home to answer in their own homes direct telephone calls of complaints from customers and, in case they did not go home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency? [334]

Interrogatory No. 6:

If the foregoing Interrogatory No. 5 is answered in the affirmative, please state the names of said plaintiffs from whom any service was required after the end of their eight hour shift, other than the performance of emergency services as defined in the defendant's answer to the third amended complaint, and other than being required on certain days of the week if at home to answer in their own homes direct telephone calls or complaints from customers and, in case they did not go home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency; and state the character of such service.

Interrogatory No. 7:

Have all of the plaintiffs named in the foregoing Interrogatory No. 1 at all times from and after March 19, 1942, and until July 1, 1947, received a monthly salary payable semi-monthly, and thereafter a weekly salary?

Interrogatory No. 8:

In addition to the above salary, have not all of the plaintiffs named in the foregoing Interrogatory No. 1 at all times from and after March 19, 1942, received not less than time and a half for any and all emergency services, as said term is defined in the answer to the third amended complaint, which they reported on their time cards as having performed after the end of their eight hour shift?

Interrogatory No. 9:

If the foregoing Interrogatory No. 8 is answered in the negative, state what plaintiff or plaintiffs have reported emergency [335] services, as said term is defined in the answer to the third amended complaint, for which such plaintiff or plaintiffs reporting such emergency service have not been paid not less than time and a half.

Interrogatory No. 10:

During the time that any of the said plaintiffs named in the foregoing Interrogatory No. 1 were required to work six days a week, did not each and all of them receive not less than time and a half for eight hours of service on said sixth day plus not less than time and a half for any emergency service reported by them as having been performed during the nighttime hours of said sixth day, as said terms emergency service and nighttime hours are defined in the answer to the third amended complaint?

Interrogatory No. 11:

Have any of the plaintiffs named in the foregoing Interrogatory No. 1 during any of the times from and after March 19, 1942, ever been paid any compensation whatever other than said monthly or weekly salary and not less than time and a half for eight hours on the sixth day when they worked six days a week, and for emergency services which they reported as performing after the end of their eight hour shift, as said term emergency services is defined in the answer to the third amended complaint, and bonuses in case they detected meter tampering or reported prospective customers for purchases of electrical appliances, and also for vacation pay and pay on sick leave?

Interrogatory No. 12:

If the foregoing Interrogatory No. 11 is answered in the affirmative, state the names of the plaintiffs who have ever received any compensation, other than their monthly or weekly salary and not less than time and a half for eight hours for the sixth day when they [336] worked six days a week, and for emergency services, as said term emergency services is defined in the answer to the third amended complaint, which they reported having performed, and bonuses in case they detected meter tampering or reported prospective customers for purchases of electrical appliances; and state the amounts of such payments to each such plaintiff and the character of the work or services, for which the payments were made.

Interrogatory No. 13:

Have the plaintiffs Paul W. Cockrell, J. D. Borden, A. L. Honnell and Clarence C. Prinslow, or any of them, ever been paid anything whatever for being required, during certain days of the week, in case they did not go

home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency

Interrogatory No. 14:

In case the foregoing Interrogatory No. 13 is answered in the affirmative, state the names of the plaintiffs who have been so paid, the times when they received payment for being required, during certain days of the week, in case they did not go home after the end of the shift, or after going home left their homes, to advise the switching center where they could be reached by telephone, the number of such payments to each such plaintiff, and the amounts thereof.

Interrogatory No. 15:

Have the plaintiffs Paul W. Cockrell, J. D. Borden, A. L. Honnell and Clarence C. Prinslow, or any of them, ever had any contract or agreement that they were to be paid anything for being required on certain days of the week, in case they did not go home after the end of their shift, or after going home left their homes, [337] to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 16:

If the foregoing Interrogatory No. 15 is answered in the affirmative, state whether the agreement or contract was oral or written, and, if written, attach a copy of the same to your answer; if oral, state the substance of the said oral agreement and when and by whom it was made on behalf of the defendant.

Interrogatory No. 17:

Was there any custom or practice of defendant company to pay the plaintiffs Paul W. Cockrell, J. D. Borden, A. L. Honnell and Clarence C. Prinslow, or any of them, any compensation for being required on certain days of the week, in case they did not go home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 18:

If the foregoing Interrogatory No. 17 is answered in the affirmative, state fully of what the custom consisted and of what the practice consisted.

Interrogatory No. 19:

Have the plaintiffs Paul W. Cockrell, J. D. Borden, A. L. Honnell and Clarence C. Prinslow, or any of them, ever made any demand, oral or written (other than bringing or joining in this suit), upon the defendant for the payment of any amount because of being required on certain days of the week, in case they did not go home [338] after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 20:

If the foregoing Interrogatory No. 19 is answered in the affirmative, state fully what demands were made, the plaintiffs by whom they were made, the date or dates of such demand or demands, and to whom they were made; and if the demands were in writing attach a copy of such writing, if oral, state the substance thereof.

Interrogatory No. 21:

Have the plaintiffs W. H. Culbertson, John M. Smith and L. A. Phinney, or any of them, ever had any contract or agreement that they were to be paid anything for being required on certain days of the week if at home to answer in their own homes direct telephone calls or complaints from customers and, in case they did not go home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 22:

If the foregoing Interrogatory No. 21 is answered in the affirmative, state whether the agreement or contract was oral or written, and if written, attach a copy of the same to your answer; if oral, state the substance of the said oral agreement and when and by whom it was made on behalf of the defendant.

Interrogatory No. 23:

Was there any custom or practice of defendant to pay the [339] plaintiffs W. H. Culbertson, John M. Smith and L. A. Phinney, or any of them, any compensation for being required on certain days of the week if at home to answer in their own homes direct telephone calls or complaints from customers and, in case they did not go home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 24:

If the foregoing Interrogatory No. 23 is answered in the affirmative, state fully of what the custom consisted and of what the practice consisted.

Interrogatory No. 25:

Have the plaintiffs W. H. Culbertson, John M. Smith and L. A. Phinney, or any of them, ever made any demand oral or written (other than bringing or joining in this suit) upon the defendant for payment of any amount because of being required on certain days of the week if at home to answer in their own homes direct telephone calls or complaints from customers and, in case they did not go home after the end of their shift, or after going home left their homes, to advise the switching center of a telephone number where they could be reached in case their services were needed in the event of an emergency?

Interrogatory No. 26:

If the foregoing Interrogatory No. 25 is answered in the affirmative, state fully what demands were made, the plaintiffs by whom they were made, the date or dates of such demand or demands and to whom they were made; and if the demands were in writing attach a copy of such writing, if oral, state the substance thereof. [340]

Interrogatory No. 27:

At the time each of the said plaintiffs named in Interrogatory No. 1 was employed as or entered upon the duties of a primary service man, was he not informed in substance that he would be required to work a daily eight hour shift for five days a week (and six days while the forty-eight hour week was required by law), that on certain days during the week at the end of said shift if he did not go home, or after returning to his home he desired to leave the same, he would be required to notify the switching center of a telephone number where he could be reached in case his services were required in the event of an emergency, and were not the plaintiffs W. H. Culbertson, John M. Smith, and L. A. Phinney also advised

that in addition their names would be listed in the telephone book and that on certain days of the week when they were at home they would be required to accept direct telephone calls or complaints from customers, and were not each of said plaintiffs named in Interrogatory No. 1 also then informed that they would receive nothing in addition to a specified monthly salary for all of the foregoing services and requirements?

Interrogatory No. 28:

If the foregoing Interrogatory No. 27 was answered in the negative, list which of said plaintiffs was not so informed and state further what said listed plaintiffs were told with regard to the matters set forth in said Interrogatory No. 27. [341]

Interrogatories Numbered 29 Through 65 Immediately Following, Are Applicable Only to the Plaintiffs Who Are Alleged in Paragraph III of the First Cause of Action in the Third Amended Complaint to Have Been Employed by the Defendant as Substation Operators and Attendants or Relief Operators and Attendants: And the Use of the Word Plaintiffs in Said Interrogatories Is Intended to Be Limited Accordingly.

Interrogatory No. 29:

From and after March 19, 1942, have any of the said plaintiffs ever been paid any compensation other than a monthly salary payable semi-monthly (or weekly salary after July 1, 1947) and not less than time and a half for all emergency service reported by them as having been performed during nighttime hours as said terms emergency service and nighttime hours are defined in the answer to the third amended complaint?

Interrogatory No. 30:

If the foregoing Interrogatory No. 29 is answered in the affirmative, state the plaintiffs who were paid any such compensation, the dates and amounts of such payments, and the services for which they were paid.

Interrogatory No. 31:

From and after March 19, 1942, did all of the said plaintiffs make out their own time reports?

Interrogatory No. 32:

If the answer to the foregoing Interrogatory No. 31 is in [342] the negative, state which of said plaintiffs did not make out their own time reports.

Interrogatory No. 33:

From and after March 19, 1942, did all of the said plaintiffs customarily report eight hours of work upon every day on which they reported as working?

Interrogatory No. 34:

If the answer to the foregoing Interrogatory No. 33 is in the negative, state which of said plaintiffs did not customarily report eight hours upon any day upon which he reported as working, the dates when he reported less than eight hours, and the conditions under which he reported less than eight hours for any day worked.

Interrogatory No. 35:

From and after March 19, 1942, did any of the said plaintiffs ever report any overtime except for emergency service performed during the nighttime hours, as said terms emergency service and nighttime hours are defined in the answer to the third amended complaint?

Interrogatory No. 36:

If the answer to the foregoing Interrogatory No. 35 is in the affirmative, state the character of the overtime reported, the dates and amounts thereof, and the plaintiffs by whom the same was reported.

Interrogatory No. 37:

Other than the filing or joining in of this suit, did any of the said plaintiffs ever make any demand upon the defendant for any compensation other than their monthly or weekly salary and overtime for emergency service reported by them as having been [343] performed during the nighttime hours, as said terms emergency service and nighttime hours are defined in the answer to the third amended complaint?

Interrogatory No. 38:

If the answer to the foregoing Interrogatory No. 37 is in the affirmative, state fully what demands were made, the plaintiffs by whom they were made, the date or dates of such demand or demands, and to whom they were made; and if the demands were in writing, attach a copy of such writing; if oral, state the substance thereof.

Interrogatory No. 39:

During the time that the Substation Division was Operating on six days a week, did not each of the said plaintiffs report not less than eight hours of overtime for the said sixth day they worked?

Interrogatory No. 40:

If said Interrogatory No. 39 is answered in the negative as to any of the said plaintiffs, state which of said plaintiffs did not report at least eight hours of overtime for said sixth day worked, and the dates and conditions under which he reported less than eight hours of overtime for said sixth day worked.

Interrogatory No. 41:

Did any of the said plaintiffs ever report more than eight hours of overtime for the sixth day they worked unless they had performed emergency service during the nighttime hours as the terms emergency service and nighttime hours are defined in the answer to the third amended complaint? [344]

Interrogatory No. 42:

If the answer to the foregoing Interrogatory No. 41 is in the affirmative, state the dates and character of the overtime reported and by what plaintiffs.

Interrogatory No. 43:

Did any of the said plaintiffs have any contract, written or oral, that they should be paid anything other than their monthly or weekly salary for being required during five days a week (and six days a week when the Substation Division was operating upon a 48-hour week) to remain so near to the substation or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 44:

If the foregoing Interrogatory No. 43 is answered in the affirmative, state what was the nature of the contract, whether written or oral, and if written, attach a copy of it; and if oral, state the substance thereof and when and by whom it was made on behalf of the defendant.

Interrogatory No. 45:

Was there any custom or practice of defendant to pay the said plaintiffs or any of them any compensation other than their monthly or weekly salary for being required during five days a week (and six days a week when the Substation Division was operating upon a 48-hour week)

to remain so near to the substation or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 46:

If the foregoing Interrogatory No. 45 is answered in the affirmative, state fully of what the custom consisted and of what the practice consisted. [345]

Interrogatory No. 47:

What were the active duties of the plaintiff substation operators and attendants?

Interrogatory No. 48:

Approximately how long each day did it require for the said plaintiffs to perform their active duties?

Interrogatory No. 49:

What were the active duties of the plaintiff relief operators and attendants?

Interrogatory No. 50:

Approximately how long each day did it require for the said plaintiffs to perform their active duties?

Interrogatory No. 51:

Was there any time fixed by defendant during the twenty-four hours in which the said plaintiffs were to perform their active duties as set out in answers to the foregoing Interrogatories Nos. 47 and 49?

Interrogatory No. 52:

If you answer the foregoing Interrogatory No. 51 in the affirmative, state the hours in which their said active duties were required to be performed.

Interrogatory No. 53:

Did the plaintiffs or any of them understand that they were employed to work a definite scheduled eight hour daily shift? [346]

Interrogatory No. 54:

If the answer to the foregoing Interrogatory No. 53 is in the negative, state upon what basis the said plaintiffs customarily reported eight hours of work for each day on which they reported working and no overtime except for emergency service performed during the nighttime hours, as said terms emergency service and nighttime hours are defined in the answer to the third amended complaint.

Interrogatory No. 55:

What did plaintiffs understand said "reported eight hours" referred to in Interrogatory No. 54, to represent?

Interrogatory No. 56:

If the answer to the foregoing Interrogatory No. 53 is in the affirmative, did the said plaintiffs or any of them understand that their monthly or weekly salary which was paid to them was paid only for such eight hour daily shift?

Interrogatory No. 57:

If the answer to the foregoing Interrogatory No. 56 is in the affirmative, list the names of the plaintiffs who understood that their monthly or weekly salary which was paid to them was paid only for such eight hour daily shift.

Interrogatory No. 58:

Did the plaintiffs or any of them understand that their monthly or weekly salary was payment for anything other than their active duties? [347]

Interrogatory No. 59:

If the foregoing Interrogatory No. 58 is answered in the affirmative, state what other services than their active duties they understood were to be compensated for by their monthly or weekly salary.

Interrogatory No. 60:

From and after March 19, 1942, did plaintiffs or any of them receive any compensation other than their monthly or weekly salary for being required during five days a week (and six days a week when the Substation Division was operating upon a 48-hour week) to remain so near to the substation or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 61:

If the foregoing Interrogatory No. 60 is answered in the affirmative, state which of said plaintiffs received any such compensation, and state of what such compensation consisted and how it was computed.

Interrogatory No. 62:

Was not each of the said plaintiffs told when he was employed as or entered upon the duties of a substation operator and attendant or relief operator and attendant that he would be required during five days of the week (and six days a week when the Substation Division was operating on a 48-hour week) to remain so close to the substation or his residence as to be able to hear and respond to an alarm bell in case his services were needed? [348]

Interrogatory No. 63:

If the foregoing Interrogatory No. 62 is answered in the negative, list which of said plaintiffs were not so in-

formed, then state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 62.

Interrogatory No. 64:

Was not each of the said plaintiffs told when he was employed as or entered upon the duties of a substation operator and attendant or relief operator and attendant that he would receive a specified monthly or weekly salary?

Interrogatory No. 65:

If the foregoing Interrogatory No. 64 is answered in the negative, list which of said plaintiffs were not so informed and state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 64.

Interrogatories Numbered 66 Through 93 Immediately Following, Are Applicable Only to the Plaintiffs Who Are Alleged in Paragraph III of the First Cause of Action in the Third Amended Complaint to Have Been Employed by the Defendant as Hydro Station Attendants or Apprentice Attendants; and the Use of the Word Plaintiffs in Said Interrogatories Is Intended to Be Limited Accordingly.

Interrogatory No. 66:

From and after March 19, 1942, have any of the said plaintiffs ever been paid any compensation other than a monthly salary payable semi-monthly (or weekly salary after July 1, 1947) [349] and not less than time and a half for all work reported by them as having been performed in excess of forty hours per week?

Interrogatory No. 67:

If the foregoing Interrogatory No. 66 is answered in the affirmative, state the plaintiffs who were paid any such compensation, the times and amounts of such payments, and the services for which they were paid.

Interrogatory No. 68:

From and after March 19, 1942, did all of the said plaintiffs make out their own time reports?

Interrogatory No. 69:

If the answer to the foregoing Interrogatory No. 68 is in the negative, state which of said plaintiffs did not make out their own time reports.

Interrogatory No. 70:

From and after March 19, 1942, did any of the plaintiffs ever report less than eight hours of work for any day upon which they reported working?

Interrogatory No. 71:

State the nature of the active duties required of the plaintiff hydro station attendants.

Interrogatory No. 72:

State the nature of the active duties required of the plaintiff hydro station apprentice attendants.

Interrogatory No. 73:

From and after March 19, 1942, was there any time fixed by [350] the defendant during the day in which the said plaintiffs were required to perform their active duties?

Interrogatory No. 74:

If the foregoing Interrogatory No. 73 is answered in the affirmative, state the hours or period of time in which the plaintiffs were required to perform their said active duties.

Interrogatory No. 75:

From and after March 19, 1942, did the plaintiffs consider that their employment contemplated the performance of their active duties in an eight hour daily shift?

Interrogatory No. 76:

If the answer to the foregoing Interrogatory No. 75 is in the affirmative, state the hours of the daily shift of each of the said plaintiffs.

Interrogatory No. 77:

State the average length of time which was required by the plaintiffs to perform their active duties.

Interrogatory No. 78:

If the answer to either Interrogatory No. 73 or No. 75 (or both) is in the negative, state upon what basis each plaintiff employed as a hydro station attendant or apprentice attendant continuously reported not less than eight hours of work for each day on which they reported working?

Interrogatory No. 79:

What did plaintiffs understand said "reported eight hours" referred to in Interrogatory No. 78 to represent? [351]

Interrogatory No. 80:

Did the plaintiffs or any of them understand that their monthly or weekly salary was payment for anything other than their active duties?

Interrogatory No. 81:

If the foregoing Interrogatory No. 80 is answered in the affirmative, state what other services than their active duties they understood were to be compensated for by their monthly or weekly salary.

Interrogatory No. 82:

From and after March 19, 1942, was there any contract or agreement to pay the plaintiffs or any of them any compensation other than their monthly or weekly salary for being required during certain days of the week to remain so near the station or their residence as to be able to hear and respond to an alarm bell in case their services were needed?

Interrogatory No. 83:

If the foregoing Interrogatory No. 82 is answered in the affirmative, state what was the contract, whether oral or in writing, and if in writing attach a copy; if oral, state the substance thereof and when and by whom it was made on behalf of the defendant.

Interrogatory No. 84:

From and after March 19, 1942, was there any custom or practice of defendant to pay the plaintiffs or any of them any compensation other than their monthly or weekly salary for being required during certain days of the week to remain so near the station or their residence as to be able to hear and respond to an [352] alarm bell in case their services were needed in the event of an emergency?

Interrogatory No. 85:

If the foregoing Interrogatory No. 84 is answered in the affirmative, state fully of what the custom consisted and of what the practice consisted.

Interrogatory No. 86:

State whether any payment was ever made to any of the plaintiffs other than their monthly or weekly salary for being required during certain days of the week to remain so close to the station or their residence as to be able to

hear and respond to an alarm bell in case their services were needed.

Interrogatory No. 87:

If the answer to the foregoing Interrogatory No. 86 is in the affirmative, state what payments were made, when they were made, and to which of said plaintiffs.

Interrogatory No. 88:

Other than either filing or joining in this suit, did any of the plaintiffs ever make any demand upon the defendant for any compensation other than the monthly or weekly salary and overtime payments heretofore received by them?

Interrogatory No. 89:

If the foregoing Interrogatory No. 88 is answered in the affirmative, state by what plaintiffs such demand was made, when and to whom, and whether written or oral; if written, attach a copy or copies of any such written demand or demands; if oral, state the substance of such demand or demands. [353]

Interrogatory No. 90:

Was not each of the said plaintiffs told when he was employed as or entered upon the duties of a hydro station attendant or apprentice attendant that he would be required during certain days of the week to remain so close to the station or his residence as to be able to hear and respond to an alarm bell in case his services were needed.

Interrogatory No. 91:

If the foregoing Interrogatory No. 90 is answered in the negative, list which of said plaintiffs were not so informed, then state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 90.

Interrogatory No. 92:

Was not each of said plaintiffs told when he was employed as or entered upon the duties of a hydro station attendant or apprentice attendant that he would receive a specified monthly or weekly salary?

Interrogatory No. 93:

If the foregoing Interrogatory No. 92 is answered in the negative, list which of said plaintiffs were not so informed and state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 92. [354]

Interrogatories Numbered 94 Through 119 Immediately Following, Are Applicable Only to the Plaintiffs Who Are Alleged in Paragraph III of the First Cause of Action in the Third Amended Complaint to Have Been Employed by the Defendant as Head Works Tenders and the Use of the Word Plaintiffs in Said Interrogatories Is Intended to Be Limited Accordingly.

Interrogatory No. 94:

From and after March 19, 1942, have any of the plaintiffs ever been paid any compensation other than a monthly salary payable semi-monthly (or a weekly salary after July 1, 1947) and not less than time and a half for all work reported by them as having been performed in excess of forty hours per week?

Interrogatory No. 95:

If the foregoing Interrogatory No. 94 is answered in the affirmative, state the plaintiffs who were paid any such compensation, the times and amounts of such payments, and the services for which they were paid.

Interrogatory No. 96:

From and after March 19, 1942, did all of the said plaintiffs make out their own time reports?

Interrogatory No. 97:

If the answer to the foregoing Interrogatory No. 96 is in the negative, state which of said plaintiffs did not make out their own time reports. [355]

Interrogatory No. 98:

From and after March 19, 1942, did any of the plaintiffs ever report less than eight hours of work for any day upon which they reported working?

Interrogatory No. 99:

State the nature of the active duties required of the plaintiff head works tenders?

Interrogatory No. 100:

State the average daily time it would require each of the plaintiffs to perform his active duties.

Interrogatory No. 101:

From and after March 19, 1942, was there any time fixed by the defendant during the day in which the said plaintiffs were required to perform their active duties?

Interrogatory No. 102:

If the foregoing Interrogatory No. 101 is answered in the affirmative, state the hours or period of time in which the plaintiffs were required to perform their said active duties.

Interrogatory No. 103:

From and after March 19, 1942, did the plaintiffs consider that their employment contemplated the performance of their active duties in an eight hour daily shift?

Interrogatory No. 104:

If the answer to the foregoing Interrogatory No. 103 is in the affirmative, state the hours of the daily shift of each of the said plaintiffs. [356]

Interrogatory No. 105:

Was the monthly salary until July 1, 1947, and thereafter the weekly salary received and accepted by plaintiffs or any of them in payment for their active services?

Interrogatory No. 106:

If the foregoing Interrogatory No. 105 is answered in the negative, as to any plaintiffs, state what other services were understood by said plaintiffs to be covered by said salary.

Interrogatory No. 107:

If the foregoing Interrogatory No. 105 is answered in the affirmative, state whether any compensation was ever paid to any of said plaintiffs for any inactive service or for being required on certain days of the week to remain so close to their residence as to be able to hear and respond to an alarm bell in case their services were needed.

Interrogatory No. 108:

If the foregoing Interrogatory No. 107 is answered in the affirmative, state to which of said plaintiffs such compensation was paid, when, and the amount thereof.

Interrogatory No. 109:

If the foregoing Interrogatory No. 105 is answered in the affirmative, state how and by what method work in excess of forty hours per week was computed or reported.

Interrogatory No. 110:

From and after March 19, 1942, did any of the plaintiffs ever report less than eight hours on any day on which he reported working except where after starting work he was relieved from [357] any duties before 4:30 or 5:00 o'clock p. m. because of accident, sickness, or other unusual cause?

Interrogatory No. 111:

From and after March 19, 1942, was there any contract or agreement to pay the plaintiffs or any of them any compensation other than their monthly or weekly salary for being required during certain days of the week to remain so close to their residence as to be able to hear and respond to an alarm bell in case their services were required in event of an emergency?

Interrogatory No. 112:

If the foregoing Interrogatory No. 111 is answered in the affirmative, state whether the contract was written or oral, and, if written, attach a copy; if oral, state the substance thereof and when and by whom it was made on behalf of the defendant.

Interrogatory No. 113:

In Paragraph II of the second cause of action in the third amended complaint it is alleged, "That by custom

and practice in effect at the time of employment of plaintiffs, and at the time that plaintiffs worked overtime as hereinabove set forth, all of said overtime work was compensable." (p. 9).

What was the custom or practice upon which the plaintiffs' allegations of Paragraph II of the second cause of action in the third amended complaint are based?

Interrogatory No. 114:

From and after March 19, 1942, was there any custom or practice of defendant to pay the plaintiffs or any of them any compensation other than their monthly or weekly salary for [358] being required during certain days of the week to remain so close to their residence as to be able to hear and respond to an alarm bell in case their services were required in event of an emergency?

Interrogatory No. 115:

If the foregoing Interrogatory No. 114 is answered in the affirmative, state fully of what the custom consisted and of what the practice consisted.

Interrogatory No. 116:

Was not each of said plaintiffs told when he was employed as or entered upon the duties of a head works tender that he would be required during certain days of the week to remain so close to his residence as to be able to hear and respond to an alarm bell in case his services were needed?

Interrogatory No. 117:

If the foregoing Interrogatory No. 116 is answered in the negative, list which of said plaintiffs were not so informed, then state further what said list of plaintiffs were told with regard to the matters set forth in Interrogatory No. 116.

Interrogatory No. 118:

Was not each of said plaintiffs told when he was employed as or entered upon the duties of a head works tender that he would receive a specified monthly salary?

Interrogatory No. 119:

If the foregoing Interrogatory No. 118 is answered in the negative, list which of said plaintiffs were not so informed and state further what said list of plaintiffs were [359] told with regard to the matters set forth in Interrogatory No. 118.

Dated at Los Angeles, California, this 24th day of October, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd.

[Endorsed]: Filed Oct. 27, 1947. Edmund L. Smith,
Clerk. [360]

[Title of District Court and Cause]

DEFENDANT'S REQUEST FOR ADMISSIONS

To the Plaintiffs in the Above Entitled Action, and to
David Sokol, Esq., Their Attorney:

Please Take Notice that pursuant to Rule 36 of the Federal Rules of Civil Procedure you are requested to admit within fifteen (15) days after service upon you of this request, for the purposes of this action only and subject to all pertinent objections to admissibility that may be interposed at the trial, the following:

1. That the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as primary service men worked a scheduled [361] eight hour daily shift.

2. That the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as primary service men were paid a monthly salary (payable in semi-monthly installments) or a weekly salary, which was paid to them for eight hours per day for five days a week, or forty hours of service per week, except during the period that the said Distribution Division of the defendant was, pursuant to the requirements of the War Manpower Commission, operating upon a forty-eight hour week, during which period they were employed for eight hours of work per day, or an eight hour daily shift, for six days a week, and that the sixth day was reported by each of the said plaintiffs as eight hours of overtime for which each of said plaintiffs was paid not less than time and a half.

3. That each of the said plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as primary

service men was paid a monthly salary (payable in semi-monthly installments) or a weekly salary which was in full for his services performed during eight hours per day, or forty hours per week, and that they were each paid at least time and a half for any active services which they reported as performing between said eight hour shifts.

4. That none of the said plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as primary service men was ever paid anything other than their monthly salary for the requirement that during certain days of the week at the end of their shift, if they did not return home or after returning they left their homes, they advise the switching center where they could be reached in case their services were needed in case of an emergency, or for being required on certain days of the week at Santa Paula, if they were home, to take telephone calls on their home phones [362] directly from customers.

5. That the active duties (other than emergency services reported by them as having been performed during nighttime hours as said terms emergency services and nighttime hours are defined in the answer to the third amended complaint) of each of the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as substation operators and attendants or relief operators and attendants normally consumed substantially less than eight hours per day.

6. That the contract of employment between defendant and the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as substation operators and attendants or relief operators and attendants was as alleged in sub-

paragraphs (E) and (F) respectively of Paragraph III of the defendant's answer to the first cause of action in the third amended complaint.

7. That the active duties (other than emergency services reported by them as having been performed during nighttime hours as said terms emergency services and nighttime hours are defined in the answer to the third amended complaint) of each of the plaintiffs who are alleged in the third paragraph of the first cause of action in the third amended complaint to have been employed as hydro station attendants or apprentice attendants normally consumed substantially less than eight hours per day.

8. That the contract of employment between the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as hydro station attendants or apprentice attendants was as alleged in subparagraph (H) of paragraph III of the defendant's answer to the first cause of action in the third amended complaint.

9. That the active duties (other than emergency services [363] reported by them as having been performed during nighttime hours as said terms emergency services and nighttime hours are defined in the answer to the third amended complaint) of each of the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as head works tenders normally consumed substantially less than eight hours per day.

10. That the contract of employment between the plaintiffs who are alleged in paragraph III of the first cause of action in the third amended complaint to have been employed as head works tenders was as alleged in sub-

paragraph (G) of paragraph III of the defendant's answer to the first cause of action in the third amended complaint.

11. That the facts alleged in the defendant's fourth affirmative answer and defense to the third amended complaint are true.

12. That the Wage and Hour Administrator issued Interpretative Bulletin No. 13 in July of 1939, that the same was revised in October, 1939, October, 1940, and November, 1940, and that as revised the 6th, 7th and 8th paragraphs thereof have, ever since the said bulletin was issued, read as set out in paragraph III of defendant's fourth affirmative answer and defense to the third amended complaint.

13. That the allegations of paragraph IV of defendant's fourth affirmative answer and defense to the third amended complaint are true and correct.

14. That the portions of the report of the mediation panel of the National War Labor Board as set out in subparagraph (C) of paragraph IV of defendant's fourth affirmative answer and defense to the third amended complaint is a true and correct statement of said portions of said report.

15. That the third order of the National War Labor Board [364] as set out in subparagraph (C) of paragraph IV of defendant's fourth affirmative answer and defense to the third amended complaint as follows:

"3. The union's request for premium pay for resident employees of the company is denied."

is a true and correct statement of said order.

16. That the allegations of paragraph V of defendant's fourth affirmative answer and defense to the third amended complaint are true and correct.

17. That the allegations of paragraph VI of defendant's fourth affirmative answer and defense to the third amended complaint are true and correct.

18. That the allegations of paragraph VII of defendant's fourth affirmative answer and defense to the third amended complaint are true and correct.

19. That on or about July 5, 1941, there was a radio discussion of the Fair Labor Standards Act between Mr. Mullendore, then Executive Vice-President of the defendant, and Mr. Stellern, then Southern California Manager of the Wage and Hour Division of the United States Department of Labor, during which Mr. Stellern stated to Mr. Mulendore that the United States Department of Labor had inspected the records of the defendant Company and had found the Company to be operating in "complete compliance with the Act."

Dated at Los Angeles, California, this 28th day of October, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd. [365]

Received copy of the within Defendant's Request for Admissions this 28th day of October 1947. David Sokol, by Elizabeth Watson, Attorney for Plaintiffs.

[Endorsed]: Filed Oct. 29, 1947. Edmund L. Smith, Clerk. [366]

[Title of District Court and Cause]

PLAINTIFFS' REQUEST FOR ADMISSIONS

To the Defendant and Its Attorneys:

Please Take Notice that pursuant to Rule 36 of the Federal Rules of Civil Procedure you are requested to admit within ten (10) days after service upon you of this request, for the purposes of this action only and subject to all pertinent objections to admissibility that may be interposed at the trial, the following:

1. That in the year 1945, approximately June 15, 1945, the defendant submitted to the National War Labor Board a request for approval of a salary adjustment for the plaintiffs, Hydro employees, in words in part as follows: [367]

"8. (c)

<u>Department or Type of Employee</u>	<u>Name</u>	<u>Labor Organization Address</u>	<u>Affiliation</u>
Operator, Apprentice;	International	2316 W. 7th	A. F. of L.
Attendant, Hydro Station;	Brotherhood of	Los Angeles	
Attendant, Relief Hydro;	Electrical		
Operator, Relief Hydro;	Workers		
Operator, 1st Hydro—			
Base Plant; Station Chief,			
Asst. Hydro—Base;			
Station Chief, Hydro Plant.			

9. To be initiated on June 15, 1945, to as many locations as practical and to be progressively made system wide as soon as practical.

10. Heretofore, certain of the Company's positions of hydro-generation attendants at the Company's Base Plants have included, in addition to their regular

active duties at the various plants to which they are assigned and as a part of the inactive duties attached to such positions, the requirement that, when not performing such regular duties at said plants, they remain on the Company's premises or in their homes on or adjacent thereto up to 24 hours a day on certain days each week and over 40 hours during each week.

Such men have been and are paid specified salaries on a monthly basis for these positions. The Company desires to change its method of operation so as to eliminate the requirement that such employees so remain throughout such periods, and to prescribe that no such employee will be required to remain on the Company premises or in his said home more than 40 hours during any work week in performing both his active and inactive duties.

However, while eliminating this one inactive factor of the job of having to remain on the premises more than 40 hours during any one work week, the Company desires to continue paying to each of these employees his present monthly salary, leaving his present rate range intact."

2. That during the year 1945, at approximately June 15, 1945, the defendant submitted to the National War Labor Board a request of approval of a salary adjustment for plaintiffs, classified as headworks tender, relief headworks tender, station chief, Group D, operator 1st, Group D, substation attendant, Group E, that in said classification the classifications and wage rates were set forth as follows: [368]

"Job Classification"	Number of employees in this job classif. actually working	Established Rate Range		*Average annual hourly rate
		Min.	Max.	
Headworks Tender	14	\$140-	\$200 Mo.	\$.9992)
Relief Headworks Tender	3	140-	160 Mo.	.8986)
Station Chief, Group D	14	180-	200 Mo.	1.106)
Operator 1st, Group D	17	170-	180 Mo.	1.0332)
Substation Attendant, Group E	68	160-	175 Mo.	.9846)

*These computations are based upon the assumption that the regular hours worked, paid for by the monthly salary, equaled eight hours per day, five days per week."

That also in said application the proposed adjustment in salary was requested in the following language:

"9. To be initiated on June 15, 1945, to as many locations as practical and to be progressively made system wide as soon as practical.

"10. Heretofore, certain of the Company's positions of Headworks tenders and attendants at substations classified as Group D and E have included as part of the inactive duties attached thereto the requirement that men holding such positions remain on the Company's premises or in their homes on or adjacent thereto up to twenty-four hours a day on certain days each week and over forty hours during each week. Such men have been and are paid specified salaries on a monthly basis for these positions. The Company desires to change its method of operation so as to eliminate the requirement that such employees so remain throughout such periods and to prescribe that no such employee will be required to so remain on the Company premises or in his said

home more than forty hours during any work week in performing both his active and inactive duties. however, while eliminating this one inactive factor of the job of having to remain on the premises more than forty hours during any work week, the Company desires to continue to pay to each of these employees his present monthly salary, leaving the present rate changes intact.”

3. That said applications for salary adjustments made as set forth in paragraphs 1 and 2 above were approved by the National War Labor Board and were later put into effect by the defendant.

4. That said applications for approval of salary adjustment presented to the National War Labor Board were signed on behalf of the defendant by its Vice President, R. G. Kenyon. [369]

5. That the same explanation which appeared under the classifications and wage rates for headworks tender and others as noted in paragraph 2 hereof, to-wit:

“These computations are based upon the assumption that the regular hours worked, paid for by the monthly salary, equaled eight hours per day, five days per week.”

also appeared as an explanation, following the wage rates and classifications for Hydro employees in the application for salary adjustment submitted to the National War Labor Board referred to in paragraph 1 hereof.

DAVID SOKOL

Attorney for Plaintiffs [370]

[Affidavit of service by mail.]

[Endorsed]: Filed Nov. 7, 1947. Edmund L. Smith, Clerk. [371]

[Title of District Court and Cause]

OBJECTIONS TO INTERROGATORIES AND OBJECTIONS TO REQUEST FOR ADMISSIONS

Now come the plaintiffs and make the following objections to interrogatories and request for admissions:

(1) Plaintiffs object to answering any of the interrogatories on the following grounds:

(a) Defendant has already discovered the facts therein referred to by the taking of depositions from a number of the plaintiffs in each classification involved in this action and the questions propounded in said deposition relate to all of the facts sought in the interrogatories.

(b) In order to answer the interrogatories, plaintiffs would have to have the books and records and payroll records of the defendant; plaintiffs are relying upon the records of the defendant. [372]

(c) The interrogatories are unnecessary and burdensome, and as a matter of fact, all of the facts therein requested are already in the record.

(d) Answering the interrogatories could add nothing to what the defendant already knows.

(2) Plaintiffs object to answering the following request for admissions: 13, 14, and 15 on the ground that the same are incompetent, irrelevant, and immaterial.

Points and Authorities

Where interrogatories cover a multitude of evidentiary details, plaintiff should resort to an oral examination of witnesses, and service of interrogatories to obtain such information is not proper.

Hartford Empire Co. v. Glennshaw Glass Co.,
(D. C. Pa. 1944), 4 F.R.D. 210.

- New England Terminal Co. v. Graver Tank & Mfg. Corp. (D. C., R. I. 1940), 1 F.R.D. 411.
Breakwater Paper Co. v. Monadnock Paper Mills (D. C., Mass. 1942), 2 F.R.D. 547.
Checker Cab Mfg. Corp. v. Checker Taxi Co. (D. C., Mass. 1942), 2 F.R.D. 547.
Knox v. Alter (D. C., Pa. 1942), 2 F.R.D. 337.
Stewart-Warner Corp. v. Staley (D. C., Pa. 1941), 2 F.R.D. 199. [373]

The District Court is vested with broad discretion to control the scope of interrogatories, and to deny compulsory answers where interrogatories are unnecessary, burdensome, or filed in bad faith for ulterior purpose. Federal Rules of Civil Procedure, rule 33, 28 U.S.C.A. following section 723c.—*De Bruce v. Pennsylvania R. Co.*, 6 F.R.D. 403.

Where it was not apparent how plaintiffs' interrogatory, even if facts involved were relevant, could add anything to what plaintiff himself already knew, exception to the interrogatory would be sustained.—*Doman v. Isthmian S. S. Co.*, 6 F.R.D. 609.

Where plaintiff is unable to respond to a demand for particulars because of lack of knowledge that is obtainable only through an examination before trial of defendants or their books and papers, plaintiff need not do so. Federal Rules of Civil Procedure, rules 12 (e), 26 (a), 28 U.S.C.A. following section 723C.—*Dreskin v. Zinkin*, 6 F.R.D. 615.

Respectfully submitted,

DAVID SOKOL

[Endorsed]: Filed Nov. 13, 1947. Edmund L. Smith, Clerk. [374]

[Title of District Court and Cause]

NOTICE OF OBJECTIONS TO DEFENDANT'S
INTERROGATORIES AND REQUEST FOR
ADMISSIONS

To the Defendant and its Attorney:

Please Take Notice that the objections to the defendant's interrogatories and request for admissions herein will be presented to the Honorable William C. Mathes, Judge of the above-entitled Court, on November 24, 1947, at 10:00 A. M.

Dated: November 13, 1947.

DAVID SOKOL

Attorney for Plaintiffs

[Endorsed]: Filed Nov. 13, 1947. Edmund L. Smith,
Clerk. [375]

[Title of District Court and Cause]

PLAINTIFFS' ANSWER TO DEFENDANT'S
REQUEST FOR ADMISSIONS

Plaintiffs answering defendant's request for admissions, allege:

I.

Deny the allegations in paragraphs 1, 5, 6, 7, 8, 9, 10, 11, 16, 17, and 18.

II.

Answering paragraph 2 of defendant's request for admissions, plaintiffs allege that they were paid a salary for

all services and that it was agreed that they would receive time and a half the regular hourly rate for all hours worked in excess of forty in any work week, but that defendant paid only said salary and time and a half for emergency call-outs after forty hours in the work week, except during the period when the War Man Power Commission Rules prevailed and plaintiffs received overtime for [376] the eight hours on the sixth day of work.

III.

The answer to defendant's request for admissions number 3 is set forth above. It is admitted that the plaintiffs received the overtime for the emergency call-outs.

IV.

Plaintiffs by way of answer to defendant's request for admissions number 4, admit that the primary service men received only their salary and time and a half the regular hourly rate for emergency call-outs.

V.

Answering defendant's request for admissions number 12, admit that paragraphs 6, 7, and 8 of Interpretative Bulletin No. 13 read as set out in Paragraph III of defendant's fourth affirmative defense, except that the last sentence of paragraph 6 of the bulletin should read:

"Thus, if, over a period of several months, a telephone operator has been called upon to answer only a few calls between the hours of twelve and five in the morning, a segregation of such hours from hours worked will probably be justified."

VI.

Object to answering defendant's request for admissions number 13, 14, and 15 on the ground that the same is incompetent, irrelevant, and immaterial.

VII.

Answering defendant's request for admissions number 19, plaintiffs have no information, knowledge, or belief sufficient to enable them to answer said request and on said ground deny the allegations therein. Further, plaintiffs deny said allegations on the ground that the only records in the office of the Wage and [377] Hour Administrator in Los Angeles reflect the fact that the administrator and the local office in Los Angeles have held that power companies in this area have violated the Fair Labor Standards Act by failure to pay time and a half the regular hourly rate of pay to various employees for hours spent on call for the convenience of the company in excess of forty hours per week, and have held that failure to record and pay for stand-by hours or hours on call put in generally at substations are in violation of the Fair Labor Standards Act of 1938.

DAVID SOKOL

Attorney for Plaintiffs [378]

[Verifications.]

[Endorsed]: Filed Nov. 13, 1947. Edmund L. Smith,
Clerk. [381]

[Title of District Court and Cause]

AFFIDAVIT

State of California

County of Los Angeles—ss.

Merle M. Edgerton, E. N. Sweitzer, George F. Larsen, G. W. Stark, and C. S. Myrenius, being first duly sworn, depose and say:

Answering the affidavit of J. A. Stellern, affiants state that said J. A. Stellern was for a time branch manager of the Wage Hour Office, in Los Angeles, and during the latter period of his employment was a supervising inspector in the Los Angeles Wage and Hour Division Office. That pursuant to the text of amendments to the regulations explaining the practice and function of the Wage and Hour Division (1945 Wage Hour Manual, page 271), and pursuant to the amendment issued October 28, 1947 (1947 Wage Hour Report, page 3055): [382]

“(a) The Administrator plans and directs the administration and enforcement work of the Division; issues regulations under the Fair Labor Standards Act pursuant to authority conferred thereby; and issues interpretations of the various provisions of the acts. He is assisted in his executive duties by a deputy who performs the duties set forth below and by an assistant who performs special assignments at his direction.

“(b) The Deputy Administrator is in administrative charge of the Divisions in the absence of the Administrator; shares with the Administrator the task of considering and acting upon major problems arising under the acts; and is the Administrator’s prin-

cipal assistant in carrying out the functions of his office. He is aided by an assistant."

With reference to the authority and work of the field organization of which Mr. Stellern was an employee, the regulations provide that the field organization has power to inspect and to investigate. The issuance of interpretations and determination of violations is the work of the Administrator and the Deputy Administrator and not that of the Field Staff.

The local Los Angeles office of the Wage and Hour Division has had no authority at any time to interpret the Fair Labor Standards Act of 1938.

Mr. Stellern, in his affidavit, states that he made a broadcast with Mr. Mullendore in 1941, wherein it was stated that the defendant was in complete compliance with the Act. Affiants have no knowledge concerning this broadcast, but state that none of the employees to their knowledge in the local office of the Wage and Hour Division had any authority to interpret the Act and allege that there was never any statement made to the defendant that its method of payment to the plaintiffs involved in this action, was in compliance with the law. The records in the offices [383] of the Wage and Hour Division disclose that the only time that a complaint has been made concerning violations of the Fair Labor Standards act in non-payment of overtime to employees doing the type of work done by the plaintiffs in this case, that in such instance the inspector for the local office found that the power company was violating the Act.

In the case of the California Electric Power Company complaints were made similar to the complaint in this case and the Los Angeles office of the Wage and Hour Division notified the California Electric Power Company that fail-

ure to pay time and a half the regular hourly rate of pay to various employees for hours spent on call for the convenience of the company in excess of forty hours per week showed non-conformance with the requirements of the Act, as did the company's failure to record and pay for stand-by hours or hours on call put in generally in substations. This complaint against the California Electric Power Company also involved other employees, such as hydro, substation and patrolmen.

Mr. Stellern himself is well aware of the fact that the inspection revealed these violations and that he requested compliance and that the California Electric Power Company in the early part of 1946 came into compliance by providing for overtime where, "if, due to operating reasons, the supervisor orders him (the employee) to remain at home, such time when the employee was so required to remain at home" was thereafter compensated up to 14 hours each day. The notification of the terms of the compliance was addressed to Mr. Stellern himself as will be observed in the letter attached hereto as Exhibit "A" and made a part hereof.

Affiants further state that the Wage and Hour Division has not at any time notified the defendant in writing or otherwise that its failure to pay plaintiffs or other employees in the same classifications overtime while on call and stand-by on the premises of the company, was not a violation of the Act. [384]

This is indicated further by the fact that the defendant in 1945 sought approval from the National War Labor Board to continue paying the same salary to these employees without the requirement that they remain on the defendant's premises more than forty hours during any work week. In such application the defendant requested

approval of its proposal to pay the same salary for forty hours during any work week to these employees in the performance of both their active and inactive duties, and further defendant stated that its practice of paying a salary was based upon the assumption that the regular hours worked paid for by said monthly salary equaled eight hours per day, five days per week.

The defendant was seeking approval to eliminate stand-by and on call time. If defendant had been informed by the Government that it was not necessary to pay for such time, it would have been idle to seek approval of the elimination thereof by the National War Labor Board. [385]

MERLE M. EDGERTON

Subscribed and sworn to before me this 9th day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

E. N. SWEITZER

Subscribed and sworn to before me this 9th day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

GEORGE F. LARSEN

Subscribed and sworn to before me this 9th day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

G. W. STARK

Subscribed and sworn to before me this 9th day of
November, 1947.

(Seal)

DAVID SOKOL

Notary Public

C. S. MYRENIUS

Subscribed and sworn to before me this 9th day of
November, 1947.

(Seal)

DAVID SOKOL

Notary Public [386]

EXHIBIT "A"

U. S. DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

417 H. W. Hellman Bldg.

354 South Spring Street

Los Angeles 13, Calif.

December 27, 1945

Address all

communications to:

Supervising Inspector

California Electric Power Company

8th & Market Streets

Riverside, California

In Reply Refer to:

File No. RPT:rh

Attention Mr. Albert Cage

Dear Sirs:

Thank you for your communication of December 21,
wherein you set forth your plans for attaining compliance
with the Fair Labor Standards Act in accordance with the
instructions of this office.

Your proposals appear to meet the requirements in every
respect and we thank you for your prompt attention to

the matter, and for the cooperation given during the course of inspection.

Please do not hesitate to use the services of this office on any questions that may arise in the future.

Very truly yours,

(Signed) J. A. Stellern

J. A. Stellern

Supervising Inspector [387]

Received copy of the within Affidavit this 20 day of Nov., 1947. Gibson, Dunn & Crutcher, by L. M.

[Endorsed]: Filed Nov. 21, 1947. Edmund L. Smith, Clerk. [388]

[Title of District Court and Cause]

AFFIDAVIT OF PLAINTIFFS—SUBSTATION
OPERATORS

State of California

County of Los Angeles—ss.

The undersigned plaintiffs being first duly sworn, depose and say: that the only agreement entered into by the substation employees and the defendant, Southern California Edison Company, was that said employees would be hired on a salary basis, were required to remain on the premises twenty-four hours per day, and were to receive time and a half for all hours worked in excess of forty hours in each work week.

In the hiring of substation help it was customary that prospective operators learned about the job and asked for employment on such job, usually going first to the division superintendent, who interviewed all operators first

and then sent them to the main office. At the main office, nothing was said to substation operator that the work required only a few hours per day, or two or [389] three hours per day. What was stated was that the physical activities required eight hours per day and that each employee was required to remain on the premises for the balance of the sixteen hours each day. This is confirmed by the fact that the defendant company required substation employees to place on their time record only eight hours per day. Furthermore, the log entries show at least eight hours per day and frequently more.

In answer to the affidavit of J. D. Garrison, affiants state Mr. Garrison did not say that the active duties required two or three hours per day. On the contrary, Garrison informed substation employees that twenty-four hours each day was required of them.

With respect to the affidavit of Short, he did not at any time say that the substation employees could do as they pleased either after or during their regular work. No official of the defendant company at any time said that substation employees could do as they pleased. After eight hours the substation operators considered themselves free from routine duties but understood that they were still, for the balance of the 24-hour work day, in the employ of the defendant company.

When employed the substation employees were informed that the job required twenty-four hours each day. Nothing was said by any officer, agent, or representative of the defendant that the job was the equivalent of eight hours

of duty or less. There were eight day hours each day when the employees were required to take readings and stay at the substation proper on company duty. Only after such eight hours could they go to their home on the premises. They were not free to do as they pleased during any part of said eight hours, or during the entire 24-hour period of each work day.

With respect to the failure of the plaintiffs to place on their time records the remaining sixteen hours each day as overtime, affiants state that the defendant's officers and agents [390] informed employees not to put down such time on the time record.

Affiants state that each work day they performed more than eight hours services for which they did not get paid. Plaintiffs were paid a monthly salary and were required to be on the premises twenty-four hours a day. They were instructed to put down only eight hours per day on their time cards. Overtime for special emergency work was paid after eight hours per day. During the entire twenty-four hour period of each work day, plaintiffs who were employed in the substations were subject to emergency calls and were required to wait for such emergency calls and to perform the other duties required of them by defendants.

MERLE M. EDGERTON

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

G. W. STARK

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

GEORGE F. LARSEN

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

E. N. SWEITZER

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

HOWARD L. ANDERSEN

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

C. S. MYRENIUS

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public [391]

Received copy of the within Affidavit this 20 day of Nov., 1947. Gibson, Dunn & Crutcher, by L. M.

[Endorsed]: Filed Nov. 21, 1947. Edmund L. Smith, Clerk. [392]

[Title of District Court and Cause]

AFFIDAVIT OF PRIMARY SERVICE MEN

State of California

County of Los Angeles—ss.

J. D. Borden, A. L. Honnell, C. C. Prinslow, and L. A. Phinney, being first duly sworn, depose and say: that they are plaintiffs in the classifications of primary service men.

Answering the affidavit of E. N. Husher, affiants state that the primary service men involved in this case were not employed on a definite eight-hour shift basis. Paul W. Cockrell, Clarence C. Prinslow, and A. L. Honnell were employed in the Huntington Beach district and their schedule of working hours provided seven (7) days a week on a twenty-four (24)-hour schedule each day, the following week three (3) days of eight (8) hours each, and four (4) days off. The 24-hour shift included eight hours of [393] working time and sixteen hours on stand-by duty. The men were required when on the 24-hour schedule to take all calls with respect to emergency work required. On the days when they were on an eight-hour shift, they were through immediately upon the expiration of the eight hours. During the sixteen hours of stand-by duty, if these plaintiffs in the Huntington Beach district were not available to answer all calls at their home, they were subject to discharge. As a result they had to stay in their homes to answer the calls and to be prepared immediately to do the work required. They were required after their eight hours of work while on stand-by, to take their working equipment home with them in order to be available to do the work.

Although these plaintiffs in the Huntington Beach district were told that they could leave the home if they

notified the company where they could be called by telephone, in practice this was not possible and, therefore, they were required by the necessity of the work to remain at home. The defendant required that these plaintiffs install, at their expense, a telephone at their residences for the calls while on stand-by duty.

The plaintiffs, L. A. Phinney, John M. Smith, and W. H. Culbertson were employed in the Santa Paula district. These plaintiffs had the same schedule as the Huntington Beach district primary service men. They were, in addition to the regular duties, required to answer telephone calls from consumers in the area. For this purpose the company required of them that they have a telephone and the telephone directories contained, under the heading Southern California Edison Company, the telephone number for two of the primary service men at Santa Paula, Culbertson and Phinney, so that consumers and the public, after 5:00 p. m., instead of calling the company's office, called these plaintiffs for service. Defendant, however, did not include as overtime the time spent in answering these calls which took place each day. [394] These plaintiffs were required by defendant for the seven days when they were on 24-hour duty to remain at their home for sixteen hours at the telephone so that they could be reached by defendant and consumers. The plaintiff Smith was also required to remain at home. During the 16-hour stand-by period, these plaintiffs were required to answer all trouble calls. They were subject to discharge for failure to answer any such calls at any time.

The plaintiff, J. D. Borden, was employed in the Vernon City district on a schedule of two days on 24 hours; three days on 8 hours and a half hour for lunch; and two days off. The time on the 8-hour shift was from 7:00 a. m., to 3:30 p. m., or from 3:00 p. m. to 11:30 p. m.

While on the 24-hour schedule, this plaintiff was either on active duty or stand-by for active duty. He was required by defendant to stay in his home while standing-by for active duty. In about October, 1945, the defendant for the first time informed this plaintiff that it would no longer be necessary for him to remain at home while on stand-by. The day shift for the plaintiff Borden was three days at eight hours each, two days of 24 hours and two days off. While on the night shift he worked three days on sixteen hours and two days on 24 hours and two days off.

All of the plaintiffs who were primary service men were paid a semi-monthly salary which was computed on the basis of forty hours a week and it was agreed by defendant in its order A-36 that these plaintiffs would receive time and a half for all hours worked in excess of forty hours each work week, in addition to their salary. However, defendant paid these plaintiffs only their salary and time and a half for the actual time consumed when called out for emergency service on stand-by time.

They were not free to do what they pleased after their normal eight hours of work but during the remaining sixteen hours of the days when they were on stand-by duty, they were required [395] to take the company's equipment, trucks, etc., with them and remain at their homes at the telephone to answer all calls. There was no difference in the nature of the work as between the time on regular duty and the time on stand-by duty because trouble calls came in throughout the 24-hour period and in between such calls men were required to wait to answer such calls.

During the sixteen hours of stand-by duty if calls came in and the men dressed and prepared to go out to answer

the call, and before they left were notified that the trouble had been taken care of, they were not given overtime for such time consumed in preparing to answer the call.

These plaintiffs were instructed upon coming to work for the defendant that they were to receive a salary for all services for the defendant and sometime after their employment they were notified that they would receive time and a half for the emergency call-outs. The salary was computed on a basis of forty hours a week, consisting of eight hours a day, five days a week, except when the men were subject to the War Man Power Regulations and received eight hours at time and a half their regular hourly rate for the work on the sixth day. [396]

J. D. BORDEN

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

A. L. HONNELL

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

C. C. PRINSLOW

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public

L. A. PHINNEY

Subscribed and sworn to before me this 9 day of November, 1947.

(Seal)

DAVID SOKOL

Notary Public [397]

Received copy of the within Affidavit this 20 day of Nov. 1947. Gibson, Dunn & Crutcher, by L. N.

[Endorsed]: Filed Nov. 21, 1947. Edmund L. Smith, Clerk. [398]

[Title of District Court and Cause]

PLAINTIFF HYDRO EMPLOYEES ANSWER
TO DEFENDANT'S INTERROGATORIES 66
THROUGH 93 [399]

Answers to Interrogatories 66 Through 93 Relating to
Hydro Station Attendants or Apprentice Attendants

Answer to Interrogatory 66: These plaintiffs were on a semi-monthly salary and did not receive any compensation other than the salary and time and a half for all hours reported by them in excess of forty hours per week; however, the defendant instructed these plaintiffs not to put down on their time records more than eight hours per day and time spent on emergency call-outs. These plaintiffs were instructed by defendant not to put down any time spent on call or while standing by to answer emergency call outs, although they were required to re-

main on the defendant company's premises for such purpose for twenty-four hours each work day.

Answer to Interrogatory 68: The answer to this Interrogatory is "Yes."

Answer to Interrogatory 70: Plaintiffs' Hydro employees must refer to the defendant's records to answer this interrogatory.

Answer to Interrogatory 71: Hydro station attendants had one to three stations to handle. The active duties were: taking orders from the station chief and assistant station chief, making regular inspection of each station to see that all mechanism was functioning properly, seeing that all motors, bearings and the governor were oiled, cleaning up the stations, keeping up the grounds around each station—seeing that there were no weeds, and maintaining the fire-break around the fence, maintaining the intakes in such condition that there are no obstructions, patrolling pipe lines and pen stocks, and taking meter readings and making daily reports. The power house must be kept clean and painted at all times, and the home kept repaired and presentable. This home is on company grounds within the company fence for which the employee pays rent but is required to keep in presentable condition. These Hydro employees make minor repairs both electrically and mechanically. They must live on the premises and answer all [400] telephone calls and alarms. They were not permitted to leave the premises

except on their days off. The telephones were located in the station proper and in the house. The alarm bells were about three inches in diameter and were in the bedrooms in the home and also in the substation building. They are also in the relief quarters. During the night time hours these bells and telephones are answered whenever they are rung.

Answer to Interrogatory 72: The work of the apprentice attendant was similar to the work of the Hydro station attendant.

Answer to Interrogatory 73: The answer is "No," but generally the men were in the Hydro stations between 8:00 a.m. and 4:00 p.m. and thereafter were required to remain in and about the grounds or the home or relief quarters to answer calls and emergencies.

Answer to Interrogatory 75: The answer to this interrogatory is that the plaintiffs were required to put in all of the time required in active work and also to remain on the premises for the remainder of the twenty-four hour period.

Answer to Interrogatory 78: The Hydro station employees put down eight hours on their time records each work day because they were so instructed by the defendant's officers.

Answer to Interrogatory 79: The plaintiffs understood that the reported eight hours represented eight hours of work.

Answer to Interrogatory 80: The plaintiffs understood that they were getting a salary for the work performed for the defendant, that the salary was based on forty hours of work each week and that they were to receive time and a half their regular hourly rate for all hours worked in excess of forty hours in each work week. There was no reference at any time or at any place to active or inactive duties. There was never any distinction made by defendant between active or inactive duties. The defendant required the plaintiffs to perform their labors twenty-four [401] hours a day.

Answer to Interrogatory 81: The answer to this interrogatory appears above.

Answer to Interrogatory 82: Order A36 of the defendant provides for overtime for all hours in excess of forty hours in the work week.

Answer to Interrogatory 83: The contract referred to is now in evidence in this case, having been introduced in the pre-trial.

Answer to Interrogatory 84: The activity in which the plaintiffs were engaged to wait to answer emergencies was compensable by custom and practice. Defendant contends that the active duties of the plaintiff consumed not more than two or three hours a day; yet plaintiffs were paid for eight hours. Obviously, it was not for eight hours active duty for which plaintiffs were paid according to defendant, nor was it for any definite num-

ber of hours "actual" work. Plaintiffs were being paid for all services regardless of the time of day when they were performed. This shows a custom and practice of paying for the activity in which plaintiffs were engaged during the time spent in waiting for calls and emergencies.

Answer to Interrogatory 85: This is answered in the preceding answer.

Answer to Interrogatory 86: The answer is "No."

Answer to Interrogatory 88: Object to answering this interrogatory.

Answer to Interrogatory 90: The answer is "Yes." However, the requirement that the plaintiffs remain on the company's property twenty-four hours a day was not always in effect. There was the twelve hour day up to March 1918, and thereafter, ten hours from March 1918, to November 1918, and thereafter eight hours to 1921 when the twenty-four hour requirement came [402] into effect.

Answer to Interrogatory 92: The answer is "Yes."

DAVID SOKOL

Attorney for Plaintiffs [403]

[Verified.] [404]

Received copy of the within this 20 day of Nov., 1947. Gibson, Dunn & Crutcher, by L. N.

[Endorsed]: Filed Nov. 21, 1947. Edmund L. Smith, Clerk. [405]

[Title of District Court and Cause]

DEFENDANT'S RESPONSE TO PLAINTIFFS'
REQUEST FOR ADMISSIONS

The plaintiffs, having duly served upon the defendant a further Request for Admissions pursuant to Rule 36 of the Federal Rules of Civil Procedure, the defendant now makes the following responses to said Request for Admissions:

I.

Defendant's Response to First Request

Defendant admits that under date of on or about June 28, 1945, it submitted to the National War Labor Board an "Application for Approval of a Wage or Salary Rate Adjustment or Schedule" for the types of employee therein described, a portion of which said Appli- [406] cation is set forth by plaintiffs in their first Request. A true and correct photostatic copy of said Application, in full, is attached hereto as "Exhibit A," and is hereby referred to and incorporated herein with the same force and effect as though here set forth at length.

II.

Defendant's Response to Second Request

Defendant admits that under date of on or about June 28, 1945, it submitted to the National War Labor Board an "Application for Approval of a Wage Salary Rate Adjustment or Schedule" for the types of employee therein described, a portion of which said Application is set forth by plaintiffs in their first Request. A true and correct photostatic copy of said Application, in full, is attached hereto as "Exhibit B," and is hereby referred to

and incorporated herein with the same force and effect as though here set forth at length.

III.

Defendant's Response to Third Request

Defendant admits plaintiffs' third request.

IV.

Defendant's Response to Fourth Request

Defendant admits that the Applications referred to in Answers I and II above were signed on behalf of the defendant by one of its Vice Presidents, R. G. Kenyon. [407]

V.

Defendant's Response to Fifth Request

Defendant admits that the quoted sentence which is set forth in plaintiffs' Fifth Request appeared in each of the Applications referred to in Answers I and II herein above set forth.

Dated: Los Angeles, California, November 21, 1947.

GAIL C. LARKIN

E. W. CUNNINGHAM

ROLLIN E. WOODBURY

NORMAN S. STERRY

GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd. [408]

* * * * *

[Affidavit of Service by Mail.]

[Verified.]

[Endorsed]: Filed Nov. 24, 1947. Edmund L. Smith,
Clerk. [413]

[Title of District Court and Cause]

PLAINTIFFS' ANSWERS TO INTERROGA-
TORIES PROPOUNDED BY DEFENDANT

Come now the plaintiffs and file their answers to the interrogatories propounded by the defendant:

General Answer and Explanation

The specific answers which follow or which have heretofore been filed, are hereby made subject to the following general answer and explanation.

Many of defendant's interrogatories refer to "active duties". What is an active duty will be a question ultimately to be determined by the Court or jury. None of the answers of the plaintiffs to any question in which the words "active duty" are used by the defendant should be construed as admitting or denying that any particular duty is active or inactive. The fact that certain duties may have expressly or impliedly described one duty or another as active, is not to be construed as stating that the other duties are inactive. The duties of all of the plaintiffs [414] included but was not limited to repairs, maintenance, operation, standby and emergencies. One of the duties for which each of the plaintiffs was engaged was to stand by.

All of the plaintiffs received a monthly or weekly salary which the defendant represented to the plaintiffs covered all of the duties described including standby time. There was a contract and custom to pay for standby time, except that the defendant considered that standby time was paid by the overall monthly and weekly wage.

All specific answers regarding contract, custom, minimum and overtime, active and inactive duties, must be read subject to the above explanation and general answer.

Specific Answers

(Note: Each answer number corresponds to the interrogatory number propounded by defendant above date October 24, 1947).

1. None of the plaintiffs named were employed on a definite eight hour shift for each day of their employment.

2. Primary Servicemen Cockrell, Prinslow and Homell were employed in the Huntington Beach District and their schedule of working hours provided seven days a week on a twenty-four hour schedule each. The week following they had a schedule of three days at eight hours each day, and four days off. Primary Servicemen Phinney, Smith and Culbertson were employed in the Santa Paul District on the same type of schedule as the Huntington Beach District men. Primary Serviceman Borden was employed in the Vernon City District on a schedule of two days of twenty-four hours each, three days of eight hours and a half hour for lunch, and two days off.

3. The Primary Servicemen worked eight hours and the remaining sixteen hours, when they were on twenty-four hour duty, [415] was waiting and caring for emergencies. They were required to take the company's equipment, trucks, etc., with them and remain at their homes at the phone during the standby period. However, while on standby the employer wrongfully paid only for the actual time spent in emergency calls. If an emergency call came and before they left their homes they were notified that the trouble had been taken care of, they were not given overtime for such time consumed in preparing to answer the calls. In addition, the men in the Santa Paul district were required, while at home, to answer all phone calls from patrons and consumers and the public. The telephone directory showed that after 5:00 P. M.

calls to the Southern California Edison Co. went directly to the homes of the Primary Servicemen at Santa Paul. However, these men were not paid for such time as overtime.

4. See answer to 3.

5. See answer to 3.

6. See answer to 3, and affidavit of Primary Servicemen, filed in opposition to defendant's motion for summary judgment.

7. Yes.

8. See answer to 3.

9. See answer to 3.

10. Yes, subject to answer to 3.

11. No, subject to answer to 3.

12. —

13. Yes. The employment agreement between the defendant and the Primary Servicemen provided that they would receive a monthly or weekly salary plus time and a half for all hours in excess of forty hours in each work week for all activities, including emergency and standby activity. See answer to 3.

14. See answer to 13.

15. See answer to 13.

16. The contract was both oral and written. The part [416] in writing is set forth in Order A.36, which was introduced in evidence at the pre-trial and a copy of which is in the possession of the defendant. The part which was oral consisted of the actual hiring and custom and practice and representations made by the defendant to the plaintiffs to the effect that all activities, including

standby, were paid for by the weekly or monthly salary and that in addition to said weekly and monthly salary plaintiffs were to receive time and a half their regular hourly rate for all overtime in excess of forty hours each work week. Such representations were made at the time of the employment of the plaintiffs and at the time that Order A.36 was issued in 1942 and revised in 1943.

17. See answer to 16.

18. See answer to 16.

19. No formal demand was made although the plaintiffs continually complained about the failure of the defendant to pay such overtime. All of the plaintiffs were instructed not to turn in any record on their time cards, time sheets or other records, showing the standby time.

20. —

21. See answers to 3 and 16.

22. See answer to 16.

23. See answer to 16.

24. See answer to 16.

25. See answer to 19.

26. See answer to 19.

27. No.

28. All of the plaintiffs were informed at the time of their employment by the defendant that the requirements of the job that they were undertaking were such that their services were required during 24 hours of each day and they had to be available. See answer to 13. [417]

29. No, except that all activities, including standby, were alleged by the defendant to have been paid for by the

monthly or weekly salary or wage plus the designated overtime.

30. See answer to 29.

31. The plaintiffs made out their own time cards under the supervision of their superiors who instructed them to put down only eight hours plus the emergency call-outs.

32. —

33. Yes.

34. —

35. No, subject to answer 31.

36. —

37. See answer to 19.

38. —

39. Yes, under instructions as in answer to 31.

40. —

41. No, under instructions as in answer to 31.

42. —

43. See answer to 16.

44. See answer to 16.

45. See answer to 16.

46. See answer to 16.

47. See affidavit of substation operators, attendants and relief men (plaintiffs) filed in support of plaintiffs' motion for summary judgment.

48. See answer to 47.

49. The relief men did the same work as the substation operators, except that they did not make the monthly clerical report, and except that they travelled from station to station.

50. See answer to 47.

51. See answer to 47. [418]

52. These plaintiffs were required to be on the premises of the defendant twenty-four hours each day.

Normally they were in the substation proper from about 8:00 A. M. to 5:00 P. M.

53. No, subject to answer to 52.

54. See answers to 52 and 53. Plaintiffs were directed by the defendant to put down eight hours on the time card.

55. There was no understanding concerning this, except that plaintiffs were informed that they were to put down eight hours.

56. No.

57. —

58. The plaintiffs understood that their monthly or weekly salary, plus payment for emergency time, was payment for all duties and activities performed. They were to receive time and a half for all hours in excess of forty in each work week.

59. See answer to 58.

60. No.

61. —

62. Yes.

63. —

64. Yes.

65. —

66-81. Answers on file.

82. See answer to 16.

83. See answer to 16.

84-92. Answers on file.

93. —

94. See answer to 29.

95. See answer to 29.

96. See answer to 31.

97. —

98. No. [419]

99. See deposition of E. G. Eggers, plaintiff, taken by defendant September 25, 1945 and on file.

100. Plaintiffs were required to be on defendant's premises twenty-four hours each day. They are unable at this time to distinguish between active and other duties.

101. No.

102. —

103. No.

104. —

105. The monthly salary to July 1, 1947, and thereafter the weekly salary received and accepted by plaintiffs, or any of them, was allegedly in payment for all of their services.

106. See answer to 105.

107. The plaintiffs were paid a monthly or weekly salary which was intended by defendant to cover all of the services rendered by the plaintiffs, except that the plaintiffs did receive time and a half for responding to emergency calls.

108. —

109. See answer to 105.

110. Plaintiffs have no present information regarding same; said information is contained in the records of the defendant.

111. See answer to 16.

112. See answer to 16.

113. See answer to 16.

114. See answer to 16.

115. See answer to 16.

116. Yes, and residence was on company property.

117. —

118. Yes.

119. —

Dated: January 12, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD

By David Sokol

Attorneys for Plaintiffs. [420]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith,
Clerk. [421]

[Title of District Court and Cause]

ADDITIONAL ANSWERS TO DEFENDANT'S
REQUEST FOR ADMISSIONS

Plaintiffs, answering defendant's request for admissions, allege:

I.

Deny the allegations in paragraph 13.

II.

Admit the allegations in paragraph 14.

III.

Admit the allegations in paragraph 15.

Dated: January 12, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD

By David Sokol

Attorneys for Plaintiffs. [422]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jan. 14, 1948. Edmund L. Smith,
Clerk. [423]

[Title of District Court and Cause]

NOTICE OF APPLICATION FOR ORDER RE-
QUIRING PLAINTIFFS TO ANSWER IN-
TERROGATORIES

To: The Plaintiffs in the action above entitled, and to
Messrs. Pacht, Warne, Ross & Bernard and to David
Sokol, Esquire, their attorneys:

Take notice that the defendant in the action above entitled will, on Tuesday, the 3rd day of February, 1948, at the hour of ten o'clock A. M., on said date, or as soon thereafter as counsel can be heard, before the Honorable Wm. C. Mathes in his Courtroom in the Federal Post Office and Court House Building, in the City of Los Angeles, State of California, under Rule 37 of the Rules of Civil Procedure for the District Courts of the United States, apply to the Court for an order requiring the plaintiffs to make definite answers to the following interrogatories, upon the ground that each [424] of the following numbered interrogatories has actually not been answered by the plaintiffs:

Interrogatories Nos. 8 and 9: The foregoing interrogatories are answered only by saying, "See answer to 3", which said answer to interrogatory No. 3 does not answer the said interrogatories Nos. 8 and 9.

Interrogatories Nos. 14 and 15: The said interrogatories are answered only by saying, "See answer to 13", which said answer to interrogatory No. 13 does not answer the said interrogatories Nos. 14 and 15.

Interrogatories Nos. 17 and 18: The said interrogatories are answered only by saying, "See answer to 16", which said answer to interrogatory No. 16 does not answer the said interrogatories Nos. 17 and 18.

Interrogatories Nos. 43, 44, 45 and 46: The said interrogatories are answered by saying, "See answer to 16", which said answer to interrogatory No. 16 does not answer the said interrogatories Nos. 43, 44, 45 and 46.

Interrogatory No. 51: The said interrogatory is answered only by saying, "See answer to 47", which said answer to interrogatory No. 47 does not answer the said interrogatory No. 51.

Interrogatories Nos. 66, 67, 68, 69, 70, 71, 73, 74, 75, 76, 78, 79, 80 and 81: The said interrogatories are answered only by saying, "66-81 answers on file". The answers to the previous questions refer to other classes of employees and do not answer the said interrogatories Nos. 66, 67, 68, 69, 70, 71, 73, 74, 75, 76, 78, 79, 80 and 81, each of which is capable of a categorical and specific answer.

Interrogatories Nos. 84 to 92, inclusive: None of the said interrogatories have been answered at all except by the statement, "Answer on file", which said statement does not answer any of the said interrogatories. [425]

Dated: Los Angeles, California, January 28, 1948.

GAIL C. LARKIN,
E. W. CUNNINGHAM,
ROLLIN E. WOODBURY,
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER,

By Norman S. Sterry

Attorneys for Defendant, Southern California
Edison Company, Ltd.

Service of the within Notice of Application is acknowledged this 28th day of January, 1948.

It Is Stipulated that the notice of said application is given within reasonable time, and that the same may be heard at the time noted, to wit, February 3, 1948.

PACHT, WARNE, ROSS & BERNHARD
and DAVID SOKOL

By David Sokol

Attorneys for Plaintiffs

Order to Clerk: File.

MATHES, J.

[Endorsed]: Filed Jan. 29, 1948. Edmund L. Smith,
Clerk. [426]

[Title of District Court and Cause]

ORDER ON DEFENDANT'S MOTION RE
INTERROGATORIES

This cause having heretofore come before the court for hearing on defendant's motion, filed January 29, 1948, requiring plaintiffs to answer certain interrogatories, and the matter having been heard and submitted for decision;

It Is Now Ordered that the defendant's said motion be and is hereby denied.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to the attorneys for the parties appearing in this cause.

May 17, 1948.

WM. C. MATHES

United States District Judge

[Endorsed]: Filed May 18, 1948. Edmund L. Smith,
Clerk. [427]

[Title of District Court and Cause]

ORDER ON MOTIONS FOR SUMMARY
JUDGMENT

This cause having heretofore come before the court for hearing on plaintiff's motion for partial summary judgment, filed September 2, 1947, and defendant's motion for summary judgment, filed October 22, 1947; and it appearing to the court:

(a) that there is no genuine issue as to any material fact involved in determining the right to recovery in this cause;

(b) that as to each plaintiff the action is one to enforce claimed liability for failure of the defendant employer to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended, [29 U. S. C. § § 201 et seq.] with respect to certain activities engaged in by the plaintiff employees [428] prior to the effective date [May 14, 1947] of the Portal-to-Portal Act of 1947 [Public Law No. 49, chapter 52, 80th Cong., 1st sess.; 29 U. S. C. § § 260 et seq.];

(c) that the activities in controversy for which overtime compensation is sought were not made compensable by any contract or custom or practice during the portion of the day when such activities were engaged in [See § 2(a)(b), Portal-to-Portal Act of 1947];

(d) that as to each plaintiff the minimum wage and overtime requirements of the Fair Labor Standards Act of 1938, as amended, have been fully met by the defendant employer at all times involved herein prior to May 14, 1947, if the non-compensable activities referred to in (b) and (c) above are ex-

cluded in computing worktime, as § 2(c) of the Portal-to-Portal Act of 1947 directs [cf. *Armour & Co. v. Wantock*, 323 U. S. 126 (1944); *Skidmore v. Swift & Co.*, 323 U. S. 134 (1944); *Tenn. Coal etc. Co. v. Muscoda Local*, 321 U. S. 590 (1944)];

(e) that since this action as to each plaintiff seeks to enforce liability on account of the failure of the employer to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended, “with respect to an activity which was not compensable under subsections (a) and (b)” of § 2 of the Portal-to-Portal Act of 1947, jurisdiction of this court of the subject-matter of the action is expressly withdrawn by the provisions of § 2(d) of the Portal-to-Portal Act of 1947; and

(f) that defendant is accordingly entitled, as [429] a matter of law, to a judgment dismissing this action as to each plaintiff for lack of jurisdiction of the subject-matter;

It Is Now Ordered:

(1) that the motion of plaintiffs for partial summary judgment, filed September 2, 1947, be and is hereby denied;

(2) that defendant's motion for summary judgment, filed October 22, 1947, be and is hereby granted; and

(3) counsel for defendant are directed to submit judgment dismissing this action as to each plaintiff for lack of jurisdiction of the subject-matter—and findings of fact and conclusions of law if so advised [See Rule 52(a) F. R. C. P., as amended March 19, 1948]—pursuant to local rule 7 within 10 days.

It Is Further Ordered that the Clerk this day forward copies of this order by United States mail to the attorneys for the parties appearing in this cause.

May 18, 1948.

WM. C. MATHES

United States District Judge

[Endorsed]: Filed May 18, 1948. Edmund L. Smith,
Clerk. [430]

In the District Court of the United States
Southern District of California
Central Division

Civil Action No. 4327 WM

MYRON E. GLENN, et al.,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD., a corporation,

Defendant.

JUDGMENT OF DISMISSAL

Plaintiffs having moved for partial summary judgment, and the defendant having moved for summary judgment against all of the said plaintiffs, the said motions came on regularly for hearing before the Honorable Wm. C. Mathes, Judge, on Tuesday, the 3rd day of February, 1948, at the hour of 10:00 o'clock A. M. Plaintiffs appeared by David Sokol, Esquire, and by Bernard Reich, Esquire, of the firm of Pacht, Warne, Ross & Bernhard, their attorneys; the defendant appeared by Norman S. Sterry, Esquire, of the firm of Gibson, Dunn & Crutcher, and Rollin E. Woodbury, Esquire, its attorneys. Said respective motions of the parties were presented to the

Court upon the entire record in the case, including all affidavits and all documents received in evidence on pre-trial hearings, and said motions were argued at length by the respective counsel, counsel for plain- [431] tiff contending, among other grounds, that the Portal-to-Portal Act of 1947 was unconstitutional, and the Court having carefully considered the matter and being fully advised in the premises, and it appearing and the Court finding from the entire record (1) that there is no genuine issue as to any material fact involved affecting the right of recovery of any of the plaintiffs; (2) that as to each plaintiff the cause of action is prosecuted to enforce recovery for an alleged failure of defendant to pay overtime compensation under the Fair Labor Standards Act of 1938, as amended (29 U. S. C. Secs. 201, et seq.) for certain activities alleged to have been engaged in by each plaintiff employee prior to May 14, 1947, the effective date of the Portal-to-Portal Act of 1947, which activities were made non-compensable by subsections (a) and (b) of Sec. 2 of the Portal-to-Portal Act of 1947, unless there was an express provision of a contract to pay for such activities or they were paid for by custom or practice; (3) that the said activities for which overtime compensation is sought by each of the said plaintiffs were not made compensable by any contract or custom or practice within the purview of subsections (a) and (b) of Section 2 of the Portal-to-Portal Act of 1947; and (4) that as to each plaintiff the minimum wage requirements of the Fair Labor Standards Act of 1938 have been fully met at all times involved herein, and that the defendant has at all times complied with all overtime requirements of the Fair Labor Standards Act if the activities for which each plaintiff sues and which are expressly rendered non-compensable by subsections (a) and (b) of Section 2 of

the Portal-to-Portal Act of 1947 are excluded pursuant to the provisions of subsection (c) of Section 2 of the Portal-to-Portal Act of 1947; and the Court having concluded that the Portal-to-Portal Act of 1947 is constitutional and having further concluded from the facts found by the Court as above recited that the defendant's motion for a summary judgment herein should be granted, except that, as the record shows without controversy as [432] hereinbefore set forth, the action seeks to impose a liability upon the defendant employer as to each plaintiff for alleged activities performed by each said plaintiff prior to May 14, 1947, which said activities were not nor were any of them compensable within the purview of subsections (a) and (b) of Section 2 of the Portal-to-Portal Act of 1947, and hence, under subsection (d) of said Section 2 of the Portal-to-Portal Act of 1947, the court is without jurisdiction of the subject matter of said action;

Now, Therefore, by Virtue of the Premises and the Law, It Is Ordered, Adjudged and Decreed that this action be, and the same is, hereby dismissed as to each and all of the plaintiffs for lack of jurisdiction of the Court of the subject matter of the said action.

Dated: June 8, 1948.

WM. C. MATHES

Judge of the United States District Court

Approved as to Form: David Sokol; Pacht, Warne, Ross & Bernhard; by Bernard Reich, Attorneys for Plaintiffs.

Judgment entered Jun. 8, 1948. Docketed Jun. 8, 1948. C. O. Book 51, page 179. Edmund L. Smith, Clerk, by John A. Childress, Deputy.

[Endorsed]: Filed Jun. 8, 1948. Edmund L. Smith, Clerk. [433]

[Title of District Court and Cause]

NOTICE OF APPEAL

To the Clerk of the Above Entitled Court, to the Defendant Above Named, and to Its Attorneys, Gibson, Dunn & Crutcher and Gail C. Larkin, Esq., E. W. Cunningham, Esq. and Rollin W. Woodbury, Esq.:

Notice is hereby given that the plaintiffs and each of them in the above entitled action hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from that certain judgment entered in this action on June 8, 1948, in favor of defendant and against the plaintiffs, and granting defendant's motion for summary judgment and dismissing the action for lack of jurisdiction, and from each and every part of the said judgment.

Dated: June 28, 1948.

DAVID SOKOL, and

PACHT, WARNE, ROSS & BERNHARD

By Bernard Reich

Attorneys for Plaintiffs [434]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jun. 29, 1948. Edmund L. Smith, Clerk. [435]

[Title of District Court and Cause]

STIPULATION

It Is Stipulated by and between the parties to the above entitled action that the defendant Southern California Edison Company, Ltd. may have to and including the 17th day of August, 1948, to file designation of additional portions of record to be included in the record on appeal in the above entitled action.

Dated: July 29, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD

By B. Reich

Attorneys for Plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry

Attorneys for Defendant Southern California Edison Company, Ltd. [440]

It is so ordered.

Dated: Aug. 2, 1948.

WM. C. MATHES

Judge, United States District Court

[Endorsed]: Filed Aug. 2, 1948. Edmund L. Smith,
Clerk. [441]

[Title of District Court and Cause]

STIPULATION EXTENDING PERIOD FOR FILING AND DOCKETING RECORD ON APPEAL PURSUANT TO RULE 73(g) OF THE FEDERAL RULES OF CIVIL PROCEDURE; STIPULATION RE CONSOLIDATION ON APPEAL; ORDER

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto:

1. The time for filing the record on appeal and docketing the action in the Circuit Court of Appeals for the Ninth Circuit is, subject to the approval of the Court, extended to and including September 25th, 1948.

2. The record on appeal in this and the companion case Raymond F. Drake, et al., v. Southern California Edison Company, Ltd., a corporation, Civil Action No. 5544WM, shall be consolidated on appeal in so far as the Rules of the Circuit Court of Appeals for the Ninth Circuit permit, it being contemplated that the parties will submit a single set of briefs for both cases, and the parties here [442] again reaffirm stipulations made heretofore that all papers, documents, affidavits, depositions and any and all other matters filed in one case shall be considered on appeal with the same force and effect as if filed in the other case.

Dated: July 26th, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By Bernard Reich
Attorneys for Plaintiffs

NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER and
GAIL C. LARKIN
E. W. CUNNINGHAM and
ROLLIN W. WOODBURY

By Norman S. Sterry
Attorneys for Defendant.

It Is So Ordered:

Dated: August 2, 1948.

WM. C. MATHES
District Judge

[Endorsed]: Filed Aug. 2, 1948. Edmund L. Smith,
Clerk. [443]

[Title of District Court and Cause]

STIPULATION AND ORDER RE DESIGNATION
OF RECORD ON APPEAL AND TRANSMIS-
SION OF ORIGINAL PAPERS

Whereas, the plaintiffs herein have filed their designation of the portions of the record in the above entitled case to be transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and

Whereas, the plaintiffs, in designating the portions of the record to be transmitted by the Clerk of the above entitled Court to the Clerk of the said United States Circuit Court of Appeals, inadvertently designated the portions of the record to be transmitted to the said Clerk of the Circuit Court of Appeals to also be printed in the record on appeal, and

Whereas, the defendant, in its designation of the portions of the record to be transmitted, specified certain reporter's transcripts, one copy of which has been filed in the above entitled cause, and of which both parties have copies,

Now, Therefore, It Is Stipulated between the parties [452] hereto:

1. That the designation by the respective parties of the record to be transmitted to the said United States Circuit Court of Appeals shall not include or be deemed to include, regardless of any language used in said specifications, the portions of the record lodged with the United States Circuit Court of Appeals to be printed by the Clerk of the said Circuit Court of Appeals, but that after the said record in the above entitled case has been transmitted to the Clerk of the said United States Circuit Court of Appeals, the said parties shall, either by stipulation or notice within the time provided by the rules of the said United States Circuit Court of Appeals, stipulate or designate the portions of the record lodged with the Clerk of the United States Circuit Court of Appeals to be printed by him.

2. That not more than one copy of the reporter's transcript designated by the defendant for inclusion in the said record to be transmitted to the Clerk of the United States Circuit Court of Appeals need be included in said record or transmitted to said United States Circuit Court of Appeals.

3. That the following papers now on file in the office of the Clerk of the above entitled Court, and which have been designated by one or the other of the parties to be transmitted as part of the record to the said Clerk of the United States Circuit Court of Appeals, need not be copied by the Clerk of the above entitled Court, but that the original papers in said record may be transmitted by the said Clerk of the above entitled Court direct to the Clerk of the said United States Circuit Court of Appeals:

(a) All depositions.

(b) Reporter's transcript of pretrial hearings dated November 18, 1946, reporter's transcript of proceedings dated July 11, 1947, and reporter's transcript of argument of Bernard Reich dated February 3, 1948. [453]

4. That the defendant, on or before the 10th day of September, 1948, shall deliver to the Clerk of the above entitled Court exact duplicates of all the exhibits introduced by the defendant at the pretrial hearing of November 18, 1946, which are listed in defendant's specification No. 17. On such delivery of the duplicate of each said document, the Clerk of the above entitled Court shall place upon each copy the appropriate exhibit number, with the word "duplicate" in brackets, and shall then forward the original of such exhibit to the said Clerk of the United States Circuit Court of Appeals as part of the record on appeal in the above entitled case.

It Is Further Stipulated that upon final decision on the appeal in the above entitled case, all original papers forwarded to the Clerk of the United States Circuit Court of Appeals shall be returned to the Clerk of the above entitled Court, and that on the return of all said original papers, all of the duplicate exhibits filed with the Clerk of the above entitled Court by the defendant shall be returned to the defendant.

It Is Further Stipulated that until the return of the original of said exhibits, the duplicates filed by the defendant shall, for the purposes of a retrial or any other proceedings have the same force and effect as the original of said exhibits and shall be deemed to, and shall, constitute a part of the records of the above entitled Court.

5. That the provisions of this stipulation with reference to the transmission of original documents to the Clerk of the said United States Circuit Court of Appeals shall not be deemed in any manner to constitute a waiver upon the part of any of the parties to have any of said original documents including, but not limited to, all depositions and all of the said exhibits specified in defendant's specification No. 17, printed by the said Clerk of the said Circuit Court of Appeals if, on further consideration, either of the parties believes such printing is necessary or desirable, and [454] the right of the parties to stipulate to, or of either party to designate, the printing in the record in the Circuit Court of Appeals of any such original papers shall be the same as though such original

papers had been copied by the Clerk of the above entitled Court into the record transmitted to the said Clerk of the said Circuit Court of Appeals.

6. That this stipulation shall be included by the Clerk of the above entitled Court as a part of the record in the above entitled case to be transmitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: Sept. 2, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD
By Bernard Reich
Attorneys for Plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
GIBSON, DUNN & CRUTCHER
By Norman S. Sterry
Attorneys for Defendant

It Is So Ordered.

Dated: Sept. 7th, 1948.

PAUL J. McCORMICK
District Judge

[Endorsed]: Filed Sep. 7, 1948. Edmund L. Smith,
Clerk. [455]

[Title of Cause]

DOCKET ENTRY

4327-RJ WM

For recovery for overtime under Fair Labor Standards Act of 1938.

Attorneys:

For Plaintiffs: David Sokol.

For Defendant: Norman S. Sterry, Gibson, Dunn & Crutcher and Gail C. Larkin, E. W. Cunningham, Rollin E. Woodbury.

Date	Plaintiff's Account	Received	Disbursed
3/19/45	David Sokol	15 00	
4/11/45	Treas T4		15 00
6/29/48	David Sokol	5 00	
7/13/48	Treas		5 00
*	* * * *	*	*

[456]

Date	Filings—Proceedings	Clerk's Fees Plain- tiff	Defend- ant	Amount Reported in Emolument Returns
3/19/45	Fld compl for wages liquidated damages, acctg & attys fees under Fair Labor Stds Act 1938. Issd summons Made Report J. S. 5	15 —		
3/23/45	Fld summons ret serv.			15 —

Date	Filings—Proceedings
4/ 7/45	Fld mot of dft to dismiss & to strike pors of compl, with not thereon ret 4/16/45 & auths in suppt.
4/12/45	Ent ord contg hrg on defts Motion to Dismiss to 10 AM 6/4/45. Notified counsel. Fld stip & ord thereon contg hrg deft mots; plfs to hv to & inc 4/23/45 to file amended compl, deft to hv to & inc 4/26/45 to amend mots.
4/12/45	Fld plfs auths in opp mot to dismiss.
4/26/45	Fld stip & ord thereon plfs hv to & inc 5/1/45 to file amended compl.
5/ 1/45	Fld amend compl.
5/ 4/45	Fld mot So. Cal. Edison Co. to dismiss & to strike & pors of amend compl, with auths in suppt & not mot ret 5/14/45.
5/ 8/45	Fld plf's pts & auths in oppos mot to dismiss & to strike.
5/14/45	Ent ord hrg on mots to dismiss and to strike go off cal until fur ord.
6/ 5/45	Fld substn Norman S. Sterry & Gibson, Dunn & Crutcher in addtn to Gail C. Larkin etal as attys for deft S. C. Edison Co.
6/23/45	Fld stip for amendmt to compl with ord thereon. Fld 2d amended compl. Fld stip & ord thereon deft SC Edison Co. hv to & inc 7/9/45 to plead or move to 2d amend compl.
7/ 9/45	Fld mots deft SC Edison Co. to dismiss & make 2d amended compl more def. & cert. & to strike portions 2d amended compl; with not mot ret 7/23/45, with pts & auths.

Date

Filings—Proceedings

- 7/11/45 Fld acknowlgmt by plfs of serv mots to dismiss etc.
- 7/13/45 Fld mot L. G. Hagerman to intervene; with not mot ret 7/23/45 & pts & auths; & lodged proposed compl. Fld plfs pts & auths in opp mot to dismiss etc. [457]
- 7/18/45 Fld depos of Eugene L. Ellingford tken 4/28/45 by defts, and plf's exhs 1, 2, & 3, to depos. Fld depos of H. S. Kaneen tken 4/28/45. Fld depos of Vernon B. Wert tken 4/28/45. Fld depos of H. L. Anderson taken 4/28/45.
- 7/23/45 Ent proc hrg and order denying Mo of debt to dismiss, and granting Mo to strike in part, and denying in part Mo to strike from 2nd Am Compl and denying Mo for more defin stmt (8).
- 8/ 9/45 Fld stip & ord ext time debt So. Calif. Edison Co. to answer interveners compl to & incl 8/23/45. Fld stip & ord ext time debt So. Calif. Edison Co. to answer 2nd amend compl to & incl 8/23/45.
- 8/22/45 Fld 2 stips & ords thereon debt Sou Calif Edison Co. hv to & inc 9/1/45 to file answer to interveners compl & to 2nd amended complaint.
- 8/30/45 Fld mot P. G. Hanlon et al to intervene as plfs; with not mot ret 9/10/45 & pts & auths.
- 8/31/45 Fld answer debt Southern Calif Edison Co., Ltd. to 2nd amended compl. Fld answer debt to compl in intervention of L. G. Hagerman.

Date

Filings—Proceedings

- 9/ 7/45 Fld stip & ord thereon P. G. Hanlon et al are allowed to intervene as & on 9/10/45 & adopt as compl in interven the 2nd amended compl on file herein, deft to file on or before 9/20/45 pleas of stat limitations.
- 9/12/45 Fld stip & ord that plfs hv to & incl 10/15/45 to plead to ans to 2nd amend compl & to ans to compl of Lawrence G. Hagerman, in intervention. Fld stip & ord permit L. W. Heinig to intervene as of 9/10/45 & to adopt as his compl the 2nd amend compl subj to terms of stip, etc. & deft permitted to file on or bef 9/25/45 such pleas of the statute limitations as it deems applicable to intervenor.
- 9/20/45 Fld supplemental answer SC Edison Co. to 2d amended compl as adopted by intervenors. [458]
- 10/ 1/45 Ent ord cont to 11/5/45, 10 a.m., for settg.
- 10/ 1/45 Fld stip & ord thereon plfs & intervenors hv to & inc 12/1/45 to move or plead to answ deft.
- 10/16/45 Fld Stip & Ord grant. permission of Floyd E. Downs at al, to intervene, etc.
- 10/23/45 Fld interrogs by plf to defts.
- 10/25/45 Fld supplemental answer to 2d amended compl by deft SC Edison Co., Ltd., setting up pleas stat limit as to cert intervenors.
- 10/26/45 Fld stip & ord thereon deft SC Edison Co. hv to & inc 11/30/45 to file objs to interrogs, and to hv to and inc 12/5/45 to file answs to interrogs.

Date

Filings—Proceedings

- 10/27/45 Fld stipulation and order thereon allowing Frank Johnson to intervene as of 10/22/45 and to adopt 2nd amend compl subject to conditions of stipulation & grtg deft in addn to its answer to file on or before 11/6/45 such pleas of the statute of limitations as it deems applicable to intervener.
- *9/ 4/45 Ent ord cont to 10/1/45, 10 a.m., for setting.
- 11/ 5/45 Ent ord contg 12/3/45 for setting for trial.
- 11/ 5/45 Fld stip & ord thereon allowg Robert C. Green & F. E. McClanahan to intervene as of 10/29/45 and to adopt as their compl the 2d amended compl on file, deft being given leave to file on or bef 11/10/45 pleas of stat of limitations.
- 11/ 6/45 Fld supplmntl answer of deft So. Cal. Edison Co. to 2nd amend compl, adopted by interveners Green & McClanahan. Fld suppl answer of deft So. Cal. Edison Co. to 2nd amend compl, as adopted by intervener Frank Johnson.
- 11/29/45 Fld stip & ord that deft may hv to and incl 12/5/45 to file objects to interrogs. Fld stip & ord cont setting to 1/7/46. [459]
- 12/ 3/45 Ent procs & ord made purs to stip htf fld on 11/29/45 cont to 1/7/46, 10 AM for settg for trial.
- 12/ 4/45 Fld 4 depositions; W. H. Culbertson, J. D. Borden, John M. Smith. & A. L. Honnell.
- 12/ 5/45 Fld answer and objections to interrogs propounded by plfs. Fld memo pts & auths in suppt deft's objec to answering cert questions.

Date	Filings—Proceedings
12/14/45	Fld stip & ord allg Sidney H. LaFond and F. D. Schwalbe to intervene as pltfs etc. Fld stip & ord allg Harlan E. Mayes to intervene as plts, etc.
12/26/45	Fld supplmtl ans of deft to 2nd amend compl adopted by intervener A. E. Fontaine. Fld supplmtl ans of deft to 2nd amend compl adopted by intervener H. E. Mayes. Fld supplmtl ans of deft to 2nd amend compl adopted by interveners S. H. LaFond and F. D. Schwalbe.
12/26/45	Fld stip & ord perm Arthur E. Fontaine to intervene as of 12/10/45 & to adopt 2nd amend compl & allow deft to ans on or before 12/31/45.
1/ 7/46	Ent ord contg 3/7/45 at 10 AM for pretrial hrg & setting.
1/11/46	Fld ord for pretrial hrg on 3/7/46 10 AM and prescribg proced; copy to counsel.
2/26/46	Fld order fxg 5/3/46, 10 AM as new pre-trial date. Notified attys.
3/14/46	Fld stip & ord gr perm H. J. Krekeles to intervene as of 1/31/46 & gr deft lv to file on or bef 3/25/46 fur pleas. Fld stip & ord gr perm E. M. Kirste, M. H. Untington & R. C. Greiner to intervene as of 1/18/46 & gr deft lv to file on or bef 3/25/46 fur pleas.
3/21/46	Fld ptf pretrial brief. Fld supplmtl ans to second amended complt, as adopted by certain interveners, settg up pleas of the statute of limits as to said interveners, H. J. Krekeles. [460]

Date

Filings—Proceedings

- 3/21/46 Fld supplmtl answer to second amended complt, as adopted by certain interveners, settg up pleas of the statute of limits as to said interveners, Edward M. Kirste.
- 4/29/46 Fld defts pre-trial brief.
- 4/30/46 Fld stip purs to pre-trial ord.
- 5/ 3/46 Ent proc on pre-trial hrg & ent ord contg to 9/9/46 at 2 PM for fur pre-trial hrg.
- 5/ 6/46 Fld stip & ord permittg G. H. Bartholomew, Merle Bartholomew, Loyd H. Bell, J. J. Bryan, Roye B. Johnson, J. W. McKernan, A. L. Neff, Fred C. Ray, Richard W. Rodenbeck, James C. Schrader, Harola A. Tunnell, and George C. Woolridge be permitted to intervene as of Mar. 21, 1946, and to have adopted the second amended complaint but subj to mots heretofore made by defendant So. Calif. Edison Co., Ltd., and that defendant has answered said complaint in intervention as to above interveners and defendant have to 6/15/46 to file pleas of statute of limitations as it deems applicable.
- 7/19/46 Fld supplmtl answer of deft to 2nd amend compl.
- 9/ 9/46 Ent ord cont 10/7/46, 10 AM for fur hrg on pretrial & for settg.
- 10/ 3/46 Fld & ent ord contg to 11/18/46 10 AM for fur pretrial.
- 10/21/46 Fld ord settg for trial 2/25/47, 10 AM. Notified attys.

Date	Filings—Proceedings
10/22/46	Fld stip that case be <i>be</i> set for trial on 2/25/47 or as soon thereafter as calendar permits, etc.
11/18/46	Ent proc on pretrial hrg. Fld 87 def't's Ex. Fld 5 ptf's Ex. Ent ord settg for trial 6/3/47 at 10 AM.
11/27/46	Fld in 4327-WM rptrs trans of proceedgs on pre-trial, dtd 11/18/46, consol.
4/29/47	Fld ord cont to 11/11/47 for trial. Notif. attys.
5/16/47	Fld req of plfs for adm of facts under Rule 36 FRCP.
5/19/47	Fld stip for subst of Nellie M. Johnson as plf instead of Frank Johnson, dec, with ord thereon. [461]
5/22/47	Fld stip & ord that dft hv to & incldg 7/1/47 to answer req for adm of facts, etc.
6/26/47	Fld not of hrg of defts mot to dismiss, retble 7/11/47, 10 am; motion to dismiss and pts and auths thereon.
6/30/47	Fld defts resp to req for adm of facts.
7/11/47	Ent proc on hrg mo to dismiss & ent ord granting with leave to ptf to amend the 2nd amended complaint by 8/15/47 and to file mo for summary judgt. Cause is reset for trial 2/3/48. Def't is allowed to 9/15/47 to respond to the motion and pltf shall have to 9/20 to reply. Counsel for def't to prepare formal order pur rule 7 in 5 days.

Date

Filings—Proceedings

- 7/25/47 Fld order granting def't's motion to dismiss with leave to file an amended complaint on or before Aug 15th 1947 if so advised. Pltf's are given leave to file a motion for summary judgment together with a memorandum of their points and authorities at any time before 8/15/47. Court has noted this cause on calendar September 22 1947 for purpose of hearing motions which may be addressed to the pleadings & directs all motions be noticed for said date, etc. Trial date of 11/11/47 is vacated and set for trial with 5544 for 2/3/48. Notified attys.
- 7/29/47 Fld stip & ord thereon ext time to & incl 9/1/47 within which pltf may file any amended compl or amendment to the 2nd amended compl or any mot for sum judg.
- 9/ 2/47 Fld affid of plfs in suppt of mot for partial sum jmt.
- 9/ 2/47 Fld third amended compl. Fld not of mot for partial summary judg purs to Rule 56, retble 9/22/47, with memo of facts and pts of law to sup thereof.
- 9/10/47 Fld stip re cert facts. [462]
- 9/16/47 Fld stip that def't hv to & includg 9/25/47 to file answer to 3rd amended complt, mot for sum jmt set for 9/22/47 be cont'd to 10/13/47 or any date to be set by court, etc.
- 9/17/47 Fld ord contg hrg on pltf's' motion for partial summary judgt to 12/9/47 at 10 AM. Notified attys.

Date	Filings—Proceedings
9/19/47	Fld plfs req for admissions. Fld plfs pre-trial brief.
9/25/47	Fld stip & ord thereon that deft have to & incl 9/29/47 to file its answer to third amended compl, etc. and that pltf's have to & incl 10/10/47 to reply to affids, etc.
9/29/47	Fld answer to third amended complt. Fld defts pts and auths in oppos to plfs mot for partial sum jmt. Fld affids on behalf of deft in oppos to mot for partial sum jmt.
10/ 1/47	Fld defts resp to req for adm of facts under Rule 36.
10/ 6/47	Fld demand of plfs for jury trial.
10/14/47	Fld rptrs trans of proceedgs.
10/22/47	Fld not of mot of deft of mot for sum jmt ret'ble 12/9/47 10 AM. Fld pts and auths in suppt of mot for sum jmt. Fld affid of G. R. Woodman.
10/27/47	Fld interrogs propounded by deft to plfs. Fld affid of serv of interrogs.
10/29/47	Fld defts req for admissions.
11/ 3/47	Fld stip and ord that plfs hv to & includg 11/13/47 to serv written objects to interrogs prev served, etc.
11/ 6/47	Fld stip and ord that plfs hv to & incldg 11/24/47 to file affids in oppos to defts mots, etc.
11/ 7/47	Fld plfs req for admissions.
11/13/47	Fld not of mot of plfs, ret'ble 11/24/47 of objects to defts interrogs and req for adms. Fld answer to defts req for admissions. [463]

Date	Filings—Proceedings
11/17/47	Fld stip and ord that deft hv to & includg 11/24/47 to answer req for adms.
11/21/47	Fld affid of Edgerton et al. Fld affid of plfs—substation operators. Fld affid of primary service men. Fld plf hydro employees answer to defts interrogs 66 thru 93.
11/24/47	Fld defts resp to plfs req for adms.
11/24/47	Fld plfs brief in oppos to defts mot for sum jmt.
11/24/47	Ent pro on hrg ptf objections to defts interrogs & requests for admissions & ent ord overruling objections to requests for admissions; ptf denies request for adm 13 and admits 14 & 15 in open court. Ent ord contg 12/4/47 at 1:30 PM for fur hrg on objections to interrogs. Ent ord contg hrg on motions for summary judgment to 12/18/47 at 10 AM.
12/ 4/47	Fld stip and ord that hrg on plfs objects to defts interrogs be cont'd to 1/5/48; that hrgs mots of plfs and deft for sum jmt be cont'd to 2/3/48; that trial of causes be cont'd to 4/13/48, 10 AM.
12/31/47	Fld stip and ord that plfs objects to defts interrogs set for 1/5 go off cal, etc.
12/31/47	Fld subst of attys for plf Edward M. Kirste; Fld not of subst of attys.
1/14/48	Fld addtl answers to deft's request for admissions. Fld pltf's answers to interrogs propounded by deft.

Date	Filings—Proceedings
1/26/48	Fld stip & ord that deft hv to & includg 3/3/48 to file exceptions to answers of plts to interrogs, etc.
1/27/48	Fld in 4327-WM original of stip re plfs answers to interrogs (copy in 5544-WM).
1/29/48	Fld not of deft of application for ord req plfs to answer interrogs, ct ord thereon not applic for 2/3/48.
2/ 2/48	Lodged defts stmt of facts.
2/ 3/48	Ent procon hrg motions of pltf & deft for summary judgt & ent ord contg 2/5/48 at 1:30 PM for fur hrg. [464]
2/ 5/48	Ent proc on fur hrg on mos for summary judgt and mo that ptfs further ans defts interrogs, and ent ord submitting.
2/27/48	Fld order fixing new trial date 7/6/48 at 10 AM. Notified attys.
3/19/48	Fld defts reply to plfs supplmtl memo pts and auths.
5/18/48	Fld ord denying defendant's motion requiring ptfs to answer cert interrogatories ntfd attys Fld order denying motion of ptfs for partial summary judgt and granting defendant's motion for summary judgt and directing counsel for deft to submit judgt dismissing action as to each pltf for lack of jurisdiction of the subject matter—and findings of fact and conclusions of law if so advised pur local rule 7 in 10 days. Ntfd attys.

Date	Filings—Proceedings
5/18/48	Fld defts statmt of evidentiary facts, etc; Fld defts collation of rec sustaining proposed findgs of fact; Fld (dupl) defts statmt of facts; Fld memo of auths where it is difficult to compute time, etc. Fld various letters re: pts & auths of mots for sum judgt.
5/27/48	Fld stip and ord that deft hv to & includg 6/14/48 to submit jmt, findings of fact, etc.
6/ 8/48	Fld & ent judgment of dismissal, COB 51/179. Doktd dism. Notif attys. MD JS-6.

Date	Filings—Proceedings	Clerk's Fees		Amount Reported in Emolument Returns
		Plain- tiff	Defend- ant	
6/29/48	Fld pltf's not of appeal affid svce by mail to defts atty. Fld \$250. Costs bond on appeal.		5 —	
7/ 1/48	Fld reptrs transc of procdgs 2/3/48.			5 —

Date	Filings—Proceedings
7/23/48	Fld plf-appls stnt of pts and desig of record.
8/ 2/48	Fld stip & ord extending period for flg & docketing rec on appeal to & incldg 9/25/48.
8/ 2/48	Fld stip & ord deft hv to & incldg 8/17/48 to file design rec on appeal.
8/17/48	Fld dfts desig addtl portions record on app.
9/ 7/48	Fld stip & ord re: design of rec on appeal & trans of orig papers. [465]

[Title of District Court and Cause]

STIPULATION

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto, that the defendant may forthwith file copies of the depositions of M. E. Roach and E. G. Eggers, both taken on the 25th day of September, 1945, and the depositions of Clarence Rogers and F. E. Griffes, both taken on the 28th day of September, 1945, with the Clerk of the United States District Court, and that for all purposes, it shall be deemed and treated as though the said depositions had been on file at all times respectively since the 5th and 8th day of October, 1945, and that said depositions may be transmitted as part of the Record on Appeal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit in accordance with the stipulation of the parties hereto on September 2, 1948 and the order of the Court on September 7, 1948. [466]

Dated: Los Angeles, California, this 14th day of October, 1948.

DAVID SOKOL and
PACHT, WARNE, ROSS & BERNHARD

By David Sokol

Attorneys for Plaintiffs

GAIL C. LARKIN
E. W. CUNNINGHAM
ROLLIN E. WOODBURY
NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER

By Norman S. Sterry by

William French Smith

Attorneys for Defendant

ORDER

The foregoing stipulation is approved, and

It Is Ordered that said depositions shall be filed nunc pro tunc as within ten days of the dates on which they were taken, that is to say that the depositions of M. E. Roach and E. G. Eggers shall be filed nunc pro tunc as of the 5th day of October, 1945 and the depositions of Clarence Rogers and F. E. Griffes nunc pro tunc as of the 8th day of October, 1945; said depositions shall be a part of the record on appeal and included in the certification of the record on appeal by the clerk of this court.

Dated: Los Angeles, California, October 20th, 1948.

PAUL J. McCORMICK

Judge of the United States District Court

[Endorsed]: Filed Oct. 20, 1948. Edmund L. Smith,
Clerk. [467]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 467, inclusive, contain full, true and correct copies of Second Amended Complaint Under Fair Labor Standards Act of 1938; Notice of Motions to Dismiss and to Make the Second Amended Complaint More Definite and Certain and to Strike Portions of the Second Amended Complaint; Minute Order Entered July 23, 1945; Answer to Second Amended Complaint; Plaintiff's Interrogatories filed Oc-

tober 23, 1945; Answer and Objections to Interrogatories Propounded by the Plaintiffs, with Affidavits and Exhibits attached; Stipulation Required by Paragraph (3) of Order for Pretrial Hearing; Stipulation filed May 3, 1946; Request of Plaintiffs for Admission of Facts Under Rule 36 of the Federal Rules of Civil Procedure filed May 16, 1947; Motion to Dismiss Filed June 26, 1947; Notice of Hearing on Defendant's Motion to Dismiss; Defendant's Response to Request for Admission of Facts Under Rule 36 of the Rules of Civil Procedure; Order on Motion to Dismiss; Third Amended Complaint Under Fair Labor Standards Act of 1938 and the Portal to Portal Act of 1947; Plaintiff's Notice of Motion for Partial Summary Judgment; Affidavit in Support of Motion for Partial Summary Judgment; Plaintiff's Request for Admissions filed Sept. 19, 1947; Answer to Third Amended Complaint; Affidavits of G. E. Moran, C. R. Clark, R. E. Rice, J. G. Winkelpleck, William H. Short, J. D. Garrison, C. E. Pichler, R. G. Kenyon, and William C. Mullendore in opposition to Motion for Partial Summary Judgment; Defendant's Response to Request for Admission of Facts Under Rule 36 of the Rules of Civil Procedure filed Oct. 1, 1947; Demand for Jury Trial; Motion of Defendant for Summary Judgment; Separate Affidavits of C. E. Pichler, E. N. Husher, G. R. Woodman and J. A. Steltern; Interrogatories Propounded by Defendant to Plaintiffs filed Oct. 27, 1947; Defendant's Request for Admissions filed Oct. 29, 1947; Plaintiffs' Request for Admissions filed Nov. 7, 1947; Objections to Interrogatories and Objections to Request for Admissions; Plaintiffs' Answer to Defendant's Request for Admissions; Affidavit of Merle M. Edgerton et al; Affidavit of Plaintiffs—Substation Operators; Affidavit of Primary

Service Men; Plaintiff Hydro Employees Answer to Defendant's Interrogatories 66 through 93; Defendant's Response to Plaintiffs' Request for Admissions filed Nov. 24, 1947; Plaintiffs' Answers to Interrogatories Propounded by Defendant; Additional Answers to Defendant's Request for Admissions; Notice of Application for Order Requiring Plaintiffs to Answer Interrogatories; Order on Defendant's Motion re Interrogatories; Order on Motions for Summary Judgment; Judgment of Dismissal; Notice of Appeal; Statement of Points and Designation of Record; Stipulation and Order re Extension of Time to file Counter-Designation; Stipulation and Order extending time to File Record and Docket Appeal; Defendant's Designation of Additional Portions of Record; Stipulation and Order re Designation of Record on Appeal and Transmission of Original Papers; Docket Sheets and Stipulation and Order re depositions which, together with copy of reporter's transcript of proceedings on November 18, 1946, July 11, 1947 and February 3, 1948; original defendant's Exhibits A, B-1 to B-12, C-1 to C-5, D-1 to D-4, E-1 to E-13, F-1 to F-26, G-1 to G-12, H-1 to H-12, I-1 to I-6, J-1 to J-12, K-1 to K-12, L-1 to L-12, M-1 to M-6, N-1 to N-12, O-1 to O-4, P-1 to P-36, Q-1 to Q-11, R-1 to R-12, S-1 to S-6, T, U, V, W, X, Y-1 and Y-2, Z, AA, AB-1 and AB-2; AC-1 and AC-2, AD, AE, AF-1 to AF-2, AG, AH-1 and AH-2, AI-1 and AI-2, AJ, AK-1 and AK-2, AL, AM, AN, AO-1 and AO-2, AP-1 and AP-2, AQ, AR-1 and AR-2, AS-1 and AS-2, AT, AU, AV-1 and AV-2,

AW-1 and AW-2, AX, AY-1 and AY-2, AZ-1 and AZ-2, BA-1 and BA-2, BB-1 and BB-2, BC-1 and BC-2, BD-1 and BD-2, BE, BF-1 and BF-2, BG, BH, BI, BJ-1 and BJ-2, BK-1 and BK-2, BL-1 and BL-2, BM-1 and BM-2, BO-1 and BO-2, BP-1 and BP-2, BQ, BR-1 and BR-2, BS-1 and BS-2, BT, BU-1 and BU-2, BV, BW-1 and BW-2, BX-1 and BX-2, BY-1 and BY-2, BZ, CA-1 and CA-2, CB-1 and CB-2, CC-1 and CC-2, CD, CE, CF-1 and CF-2, CG-1 and CG-2, CH, CI-1 and CI-2, CJ and Plaintiffs' Exhibits 1 to 5, inclusive, and original depositions of H. L. Anderson, J. D. Borden, W. H. Culbertson, Eugene L. Ellingford, L. M. Honnell, H. S. Kaneen, John M. Smith, Vernon B. Wert, E. G. Eggers, F. E. Griffes, M. E. Roach and Clarence Rogers, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$117.85 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 21 day of October, A.D. 1948.

(Seal)

EDMUND L. SMITH

Clerk

By Theodore Hocke

Chief Deputy

In the District Court of the United States for the
Southern District of California
Central Division

Honorable William C. Mathes, Judge Presiding

No. 4327WM—Civil

MYRON E. GLENN, et al.,

Plaintiff,

v.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD.,

Defendant.

No. 5544WM—Civil

RAYMOND F. DRAKE, et al.,

Plaintiff,

v.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD.,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

HEARING OF MOTION OF DEFENDANT TO
DISMISS

July 11, 1947

Appearances:

For the Plaintiffs: David Sokol, Esq.

For the Defendant: Gibson, Dunn & Crutcher; by
Norman Sterry, Esq., Rollin E. Woodbury, Esq.

Los Angeles, California, Friday, July 11, 1947,
10:00 A. M.

The Court: The motions are made in both cases?

Mr. Sterry: Yes, your Honor, the same motion is made. We filed points and authorities in the Glenn case, and stipulated they should be considered points and authorities in the other.

The Court: Yes. I have seen them. I would like to hear from Mr. Sokol. The question in my mind is, in view of the way this Act is framed, the Portal to Portal Act, whether a person seeking relief under the statute is not put to the necessity of pleading around the statute, so to speak. In other words, isn't it analogous to a person suing for fraud in the state court, more than three years after the fraud is practiced? He is put to the obligation of pleading around the statute.

Mr. Sokol: Rule 8 of the Rules of Civil Procedure, subsec. (1), requires a plain statement of the ground upon which the court's jurisdiction depends. We have done so.

The Court: Have you now, in view of the Portal to Portal Act?

Mr. Sokol: Your Honor, under Section 16(b) of the Fair Labor Standards Act, which has not been repealed, jurisdiction lies in this court. The only thing the Portal Act says is that when it comes to judgment the court cannot enter [2*] judgment. We have set forth jurisdiction in the court (2) a short and plain statement of the claim showing that the pleader is entitled to relief—a very plain statement under the rule.

We have shown (3) a demand for judgment.

The Court: I am referring to jurisdiction; not to the substance of the claim. I think they are two entirely

*Page number appearing in original Reporter's Transcript.

different questions. Congress has proceeded here to take jurisdiction away from the District Court, in a certain situation, hasn't it?

Mr. Sokol: Just in the entry of judgment.

The Court: The court would not sit idly and hear a cause, particularly one as involved as this, unless a showing is made that the court, if it entertained the case, would be able to accord some relief. That is the purpose that the requirement of jurisdiction be shown.

Mr. Sokol: Your Honor is questioning whether or not I should not, in the complaint, set forth that we come under a contract, custom or practice?

The Court: The Portal to Portal Act is an amendment to the statute, of course. I concede this is an anomalous situation. Apparently Congress was attempting to meet a constitutional objection by jurisdiction rather than meeting the subject by a substantive amendment. It says, this being a statutory court, created by statute, and having no [3] jurisdiction other than can be found in the statute, they have carved out part of that jurisdiction. The statement of the rules requiring a statement of facts upon which this court depends, is to show, and is the very question every federal court should ask when a suit is filed, where jurisdiction lies. In other words, it seems to me every plaintiff who files an action in the federal court is under an order to show cause, so to speak, why the court has jurisdiction.

Mr. Sokol: We will establish that the defense has supplied that in the pleadings.

The Court: Very well.

Mr. Sokol: If your Honor will turn to page 6 of the defendant's plea, it will be noted in the opening statement commencing on page 6—I know your Honor has read this

carefully—the defendant says that we are relying upon the Armour case. That is on page 5. On page 6, the Swift case, the Tennessee Coal and Iron case, the Jewel Ridge Coal case, and finally that famous—to some persons infamous—Mount Clemens case.

In the Jewel Ridge case there was a divided court, and at the bottom of page 6, discussing the Jewel Ridge case, counsel says: “Justice Jackson wrote a very vigorous dissenting opinion.” Your Honor, we are not relying upon the Jewel Ridge Coal case, nor the Tennessee case, nor are we relying upon the Mount Clemens case, but we are relying upon [4] Justice Jackson’s decision for the unanimous court, in the two cases, Armour and Swift.

The Court: Hasn’t Congress, in effect, reversed the Supreme Court on several of these matters, and made their decisions no longer current, in view of this statute?

Mr. Sokol: No, your Honor, not with respect to the Armour and Swift cases. Nowhere in the committee reports, or in any discussion whatsoever is any mention made, or attempted by Congress, to go around the decisions in the Swift and Armour cases.

The Court: Isn’t that the effect?

Mr. Sokol: No, your Honor. Your Honor is familiar with the Armour case. The court was unanimous in both those cases. It shows clearly why our type of action is not Portal to Portal. It is uniformly and clearly defined that the court was unanimous in the Armour and Swift cases, while in the Portal to Portal cases, the Tennessee Coal and Iron, and the Mount Clemens, there were most vigorous dissents.

In the Armour case the court said, unanimously:

“An employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to

happen. Refraining from other activity often is a factor of instant readiness to serve, and idleness plays a part in all employments in a stand-by capacity. Readiness to serve may be hired, quite as much as service itself, and [5] time spent lying in wait for threats to the safety of the employer's property may be treated by the parties as a benefit to the employer."

Let me emphasize that, your Honor. Let me show why Congress would have no authority to take away compensation for the time we are claiming. Take the case of the watchmen. Many of these people are mere watchmen in the substation. The employer says: I am going to hire you, Mr. X, as watchman. I am going to pay you one dollar an hour to come down and work. The watchman works eight hours, and only gets paid for four. Certainly, no one can deprive him of compensation.

The Court: Let me interrupt you. The question in my mind is not whether anyone may deprive that employee of a substantive claim. The question is, where may he go for relief? Does this court, not being a court of general jurisdiction, does this court, in the absence of a statute expressly conferring jurisdiction, have any jurisdiction to entertain his claim, assuming it is perfectly good and valid?

Mr. Sokol: Your Honor, our claim has been strengthened by the Portal to Portal Act.

The Court: I am not referring to the merits. I am referring particularly to jurisdiction.

Mr. Sokol: I want to develop this to show why there is a distinction between our type of claim; that Congress never intended to outlaw this type of claim, whether it was by [6] contract, custom, practice, or otherwise. What

they had reference to was portal to portal. I dare not leave the subject, because to me that is a very vital subject.

The Court: Doesn't a plaintiff in a suit, under the Act, now have to negative, in effect, by his pleading, the exclusion of the Portal to Portal Act?

Mr. Sokol: That is a negative pleading, your Honor.

The Court: It is the same situation you have in the state court. It is an anomalous situation. In equity we say the defense of laches is available when only two things are shown: One, the lapse of time, and two, prejudice to the defendant. In a fraud case the statute is three years from the discovery of the fraud. The courts have interpreted that to put the burden upon the plaintiff, (1) Why didn't he discover it? (2) Why didn't he discover it sooner? Here, instead of the statute of limitations, we have jurisdiction. Congress has created an anomalous situation, it seems to me, that the plaintiff has to deal in negatives, or facts showing negation, in order to show affirmatively jurisdiction.

Mr. Sokol: Let me answer the question directly, your Honor, and it is answered in the brief by the defendant. They have supplied the defect, on page 66 of their brief, if there is a defect (reading):

"It is perfectly true that the defendant, in its answer and in its pre-trial hearings at bar, has taken [7] the position that the monthly salary paid to each of the substation operators and attendants was for all the services which each of them rendered, of every kind and nature, and however described."

Let us turn to the answer, and let us see whether or not the defendant has not stated there was a contract to pay for this particular time. I refer to page 7 of the answer, subdivision (d).

The Court: The answer in the Glenn case?

Mr. Sokol: Yes.

Mr. Sterry: If your Honor please, if I remember, by stipulation in court, and order, entered in the minutes—a written order approved that the Drake case adopt the answer in the Glenn case, and your Honor stated the Drake case was merely a continuation of the Glenn case.

The Court: That is the effect, as I understand it.

Mr. Sterry: Mr. Sokol is continually intervening, and that is the matter we argued to your Honor on one or two hearings, and you reserved judgment; and I told Mr. Sokol we were not going to stipulate to any more interventions.

The Court: This is the original answer?

Mr. Sokol: Yes, your Honor, page 7, subdivision (d).

The Court: Answer to the second amended complaint, page 7?

Mr. Sokol: I have just the original answer in the [8] Glenn case.

The Court: That answer was interposed to the second amended complaint, I think.

Mr. Sokol: Yes.

The Court: Page 7, what line?

Mr. Sokol: Line 22, your Honor:

“Defendant alleges that the plaintiffs listed and described as primary service men were paid a monthly salary, the amount of which provided an hourly wage in excess of that provided for by the Act, and that said salary was paid to and received by each of said plaintiffs as full payment for all services, whether active or inactive.”

The same allegation is made with respect to substation operators on page 9. The answer, in other words, alleges,

your Honor, that there was a contract; that they are relying on a contract whereby they paid a monthly wage for all services, active and inactive, admitting they did not pay overtime for the inactive portion.

Your Honor, we have been in this court approximately three years. I am not going to appeal on that ground, but I appeal on the fundamental ground that as to pleadings in the federal court, contrasted with the state court, we have a very liberal rule in the interests of justice.

The Court: Yes. Mr. Sokol, I am talking about the [9] jurisdiction.

Mr. Sokol: I maintain that the defect has been supplied by the pleadings, and further, by the answer to the interrogatories. What must the plaintiff do in the federal court? He must apprise the other party of the claim; whether or not they come within the jurisdiction of the court.

The Court: I am only talking about jurisdiction. What facts must the complaint show in order to show jurisdiction in this court?

Mr. Sokol: There are facts in the answer which supply the jurisdictional material now required under the Portal to Portal Act. If we alleged we had a contract with the defendant whereby they agreed to pay for active and inactive time, and that they did not pay the overtime for inactive time, there is no question of any kind that we would come under the Portal to Portal Act. The defect is further cured by the answer to the interrogatories. I refer to page 7 of the Answer to Interrogatories. I will read that to the court:

"They had no scheduled working hours and were subject to call during twenty-four hours per day during the regular scheduled working days."

Here is another jurisdictional defect that has been cured, your Honor:

“The active duties which were required of them would not take more than two to five hours per day, and the [10] company believes and contends that their entire employment was regarded by them and by the company as the equivalent of the employment of eight hours.”

In other words, the company takes this position: No. 1. We had a contract whereby we paid them a salary for all of their active and inactive time. No. 2. They were required to be on the premises twenty-four hours a day, but they only worked three or four hours. Now you have a custom and practice of paying for stand-by time.

The Court: That is going into the merits of the case.

Mr. Sokol: That is all we can argue, your Honor, if we are going to give facts. It is alleged in an affirmative way by the defendant.

The Court: In other words, your view is, even though the rules require a short and plain statement of the facts upon which jurisdiction depends, the court may look to the defendant's answer in aid of an omission in the plaintiff's pleadings?

Mr. Sokol: For the reason, even though we admit jurisdiction, and the defendant supplies the defect, we have these wonderful rules of procedure in the federal court, which safeguard a plaintiff who has a claim. That is why the District Court has said that all you have to do is to afford fair notice to the adversary of the nature and basis of the claim. As I view the new rules they do not go upon technicalities. [11]

The Court: Jurisdiction is never a technicality.

Mr. Sokol: May I point out in this instance it is a technicality. We have been in court three years. Now the Portal to Portal Act is passed, which doesn't say we have to assert jurisdiction in a different court.

The Court: Is there anything to prevent Congress, if the Congress wished to pass an Act saying the District Court would have no jurisdiction over any matters except those arising under patent laws of the United States?

Mr. Sokol: Frankly, I don't think it is necessary to go into the constitutional phase.

The Court: Would there be anything, in your view, to prevent Congress from doing that?

Mr. Sokol: I think it would never occur. We still have public opinion to that extent.

The Court: I am referring, not to what Congress might do, but what Congress could do.

Mr. Sokol: Mr. Sterry says that Congress has that right.

Mr. Sterry: The authorities I have cited fully sustain that.

Mr. Sokol: Your Honor, the defect is further cured in the depositions taken of those persons, which are before the court.

The Court: If the pleadings can cure the jurisdiction, and aid the absence of definiteness of the jurisdictional nature in the plaintiff's complaint, the portions you have called [12] attention to probably do so, if that is the basis of the plaintiff's claim. The plaintiff claims jurisdiction rests in this court because this claim sought to be enforced here is compensable by virtue of the contract.

Mr. Sokol: Yes, contract, custom and practice. The defendant contends there was a contract whereby they were paid a salary for all active and inactive time. The

defendant says: They only worked two or three hours a day, and we paid them a salary for all this time.

The Court: Is there anything in the other pleadings, or in the interrogatories, that would supply the missing allegation that this time for which recovery is sought was compensable by virtue of practice or custom?

Mr. Sokol: Yes, your Honor. We have finally gotten a little further along in this case, and it appears now, since the defendant has filed its answer to requests for admissions,—I believe there is now hardly any question but what the employees are subject to the Act upon the question of commerce. I refer now to page 3, line 30 of the Answer to Request for Admissions; and your Honor will note the defendant has already admitted that the sub-station men and relief men were paid salaries for a twenty-four hour day for active and inactive time.

Mr. Sterry: We have not. We allege there was an implied contract that there should be an equivalent of a period [13] of eight hours, and we paid them a monthly salary to cover that. If they want to join with us and concede that that was the contract, the claim that they had actually worked under it, we will meet that issue. That is the purpose of this motion. I want to know what their theory is.

The Court: Does the defendant contend that the employees agreed, expressly or impliedly, to accept a monthly salary as an eight hours' pay, and to treat all the work they did throughout the month as equivalent to an eight hour day?

Mr. Sterry: That is the substance of it.

Mr. Sokol: Are you stipulating now that you paid them the salary for an eight hours' day?

Mr. Sterry: No, I am not making any stipulation.

Mr. Sokol: You will so stipulate?

Mr. Sterry: No. I will meet your argument. Pardon the interruption.

The Court: Is the situation, Mr. Sterry, such that the defendant here is in fact saying although the men may have worked more than the equivalent of eight hours a day over a given month, they agreed to accept monthly pay?

Mr. Sterry: No, we don't say that. I don't think the answer is susceptible to that effect.

The Court: You would rather say instead that the employees agreed that this from time to time work they did at various hours throughout the month—the employees in fact [14] stipulated that it was the equivalent for an eight-hour day for all working days throughout the month?

Mr. Sterry: Our theory always has been that the conduct amounted to an implied agreement between the parties that it was an eight hour job, and we paid them for that.

The Court: Let me understand. It was the equivalent of an eight hour job in time spent?

Mr. Sterry: They did not spend the eight hours in any active duty. It was the equivalent of eight hours.

The Court: Even though some months it might be more, and some months less, or some weeks more, and some weeks less?

Mr. Sterry: That is getting into the evidence. We don't claim an express agreement.

The Court: I was referring to the agreement you mentioned. I wanted to be sure that I understood.

Mr. Sterry: The only fair interpretation of the pleadings, if your Honor please, of the defendant's answer, is that the actual active duties, anything that they actually did that could be considered ordinarily a duty, did not take

over two to five hours a day; that they had no restraint on them, except that they could not leave the premises. It was impliedly agreed that was the equivalent of an eight hour day, and they were paid for that. The plaintiff has always insisted we paid for eight hours, and they were entitled to six or eight hours standby, and that has not been paid for. [15]

The Court: The plaintiff's contention is, as you have stated, that they were paid on the basis of eight hours a day for all the working days of the month, but were not paid for duties performed over and above eight hours a day, is that right?

Mr. Sokol: That is correct.

The Court: Let us go back to the question of aid to jurisdiction, stated by defendant's pleadings and responses to interrogatories. Is there anything which supplies the missing allegation?

Mr. Sokol: The answer does: "It was agreed between each of said plaintiffs and the defendant that the said monthly salary should be full payment for normal services of each said plaintiff, whether active or inactive."

The Court: Let us assume that the defendant's pleading may aid the defective allegations of the facts upon which the jurisdiction of this court depends,—is that the contract on which the plaintiffs base their claim to recover? As I understand it, plaintiffs would deny vigorously that there was any such construction.

Mr. Sokol: This is our position, and I will be willing to stipulate to a summary judgment on the record as it stands right now. We believe the record is complete, with the depositions and exhibits in the case.

The Court: You would have to make a motion for a summary [16] judgment.

Mr. Sokol: I realize that, and I am offering this to Mr. Sterry.

The Court: Do the plaintiffs seek recovery here under the contract which the defendant pleads, or do the plaintiffs deny that any such contract existed?

Mr. Sokol: We rely upon the contract to this extent: That the defendant contracted to pay these employees, but did not pay them in accordance with the Act for any time in excess of eight hours a day.

The Court: Isn't it true, Mr. Sokol, that plaintiffs do not seek to recover under any such contract as is pleaded by the defendant?

Mr. Sokol: I would not say that. We are relying upon the fact that the defendant has—

The Court: Do you agree that the contract was the contract which the defendant has pleaded; that it contains the stipulation which the defendant pleads it contains?

Mr. Sokol: There are other facts in it. That is only part of it.

The Court: Do you agree on that?

Mr. Sokol: With the additional facts, as I will point out.

The Court: That is not the question here, though. Assuming that the defendant's answer can aid the defective [17] statement of jurisdiction, or facts upon which jurisdiction depends, isn't the question here, whether the defendant has pleaded the contract, assuming the plaintiff's claim is a contract,—has the defendant pleaded the contract under which plaintiff seeks to recover?

Mr. Sokol: The defendants have pleaded the contract in their answer.

The Court: Let us return to that contract now. That is on page 7, subdivision (d) of the answer, is it?

Mr. Sokol: Page 8, line 9.

The Court: Is that a correct statement of the contract under which the plaintiff seeks to recover?

Mr. Sokol: Together with other statements which they are making in the pleadings, and, specifically, your Honor, it is set forth in the brief also. I will say it this way, your Honor: It clearly relates to the accounting methods in the payment of wages, that being part of the contract. They have set that up; the method of payment; upon what basis payment was made.

The Court: Does plaintiff concede, for example, that one of the terms of the contract under which plaintiffs seek to recover in this case is because of the nature of the employment, it was agreed between the substation operators and the defendant that evaluating the employment as a whole, the inactive duties of the plaintiffs and the normal active duties [18] were the equivalent of eight hours of service?

Mr. Sokol: No.

The Court: Then this is not the contract upon which the plaintiffs seek to recover?

Mr. Sokol: Yes, it is. They paid these people a monthly salary. We rely upon their statement of the facts in the answer, and their statement of actual facts.

The Court: These are part of the facts. I just read them from the answer.

Mr. Sokol: But your Honor has to take into consideration their answer to the interrogatories, whereby they stated they compute the hourly rate on the basis of 48 hours a week.

The Court: That is implicit in this pleading, of what the contract was, that they computed the hourly rate of 48 hours a week, isn't that right?

Mr. Sokol: Your Honor is correct.

The Court: Mr. Sokol, if you feel advised to make a motion for a summary judgment, I will postpone the disposition of this motion until that time.

Mr. Sokol: I will do so, your Honor.

The Court: It seems to me, if the plaintiffs here seek to recover by virtue of the contract, and the practice and custom, the time that they claim is claimed to be compensable, that those are facts upon which the jurisdiction of this court depends, in view of the Portal to Portal Act. It is an [19] anomalous situation, but that's the way I read it. It seems to me it would be very dangerous practice for the plaintiff to proceed otherwise, and it would be a waste of time, because every time this court goes through the motion without jurisdiction, it is a waste of time.

Mr. Sokol: Your Honor, I would like to do that. I think both sides can file a motion for a summary judgment.

The Court: You contend, do you, Mr. Sokol, that there are no substantive issues of fact remaining to be disposed of?

Mr. Sokol: Yes.

The Court: In view of the admissions in the pleadings and in the answers to the interrogatories.

Mr. Sokol: And the answer to Requests for Admissions.

Mr. Sterry: If your Honor please, may I make a brief statement? I am not going to talk on the merits of the case, but I want your Honor to bear this situation in mind; I want to read the statute, because you have to determine the merits for your jurisdiction. It is an anomalous situation:

“No employer shall be subject to any liability or punishment under the Fair Labor Standards Act

* * * on account of the failure of such employer to pay an employee minimum wages, or to pay an employee overtime compensation, for or on account of any activity of an employee engaged in prior to the date of the enactment of this Act, except an activity which was compensable by [20] either—

“(1) an express provision of a written or non-written contract”—that is not an implied written contract—“in effect, at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer; or

“(2) a custom or practice in effect, at the time of such activity, at the establishment or other place where such employee was employed, covering such activity, and not inconsistent with a written or non-written contract, in effect at the time of such activity, between such employee, his agent, or collective-bargaining representative and his employer.”

The custom must be not inconsistent with the contract.

“(b) For the purpose of subsection (a), an activity shall be considered as compensable under such contract provision or such custom or practice only when it was engaged in during the portion of the day with respect to which it was so made compensable. * * *

“(d) No court of the United States, of any State, Territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any action or proceeding, whether instituted prior to or on or after the date of the enactment of this Act, to enforce liability or impose punishment for or on account of the [21] failure of the employer to pay minimum wages or overtime compensation * * *

to the extent that such action or proceeding seeks to enforce any liability or impose any punishment with respect to an activity which was not compensable under subsections (a) and (b) of this section."

Your Honor, may I give one thought which is in my points and authorities, which I think your Honor overlooked? Your Honor made the statement that Congress had evidently put that in to bolster up the constitutionality of the Act. I think that is the popular conception. I don't believe that was the primary object, for the reason I state in my points and authorities.

Under the general rules of pleading I am not at all concerned, so far as the sufficiency of the complaint is concerned.

Congress was going on the basis, and from the fact that our country was flooded with these suits, the time of the court was being unnecessarily consumed, and enormous expenses were being paid, and that hence, if they were permitted to proceed with all these under such general allegations as appear in this complaint, half of the purposes of the Act would be defeated.

This case, I think, would cost \$25,000.00 to prepare, in actual cost, to say nothing of the indirect costs.

I think that was put in for the express purpose of making them come out [22] directly and saying whether or not this was a case within the Fair Standards Act. If they put in the allegation that that is not true, you can join the issue, and then determine it. That was the purpose of this motion.

Let me address myself particularly to the pleadings, because I don't think on this motion your Honor can determine the merits of the case. Let me go one step further. Mr. Sokol has said, under Rule 16 all you have to

do is to make a statement of jurisdiction, and he did that at the time. Now the Fair Labor Standards Act has come in. It is not only a saving clause, but the primary object of Congress was to wipe out pending so-called Portal to Portal cases, because such jurisdiction is withdrawn, and hence the necessity of showing jurisdiction.

The complaint alleges, your Honor, that it involves more than \$3,000.00. Your Honor could not proceed in such a situation. It would be an injustice not to give them a chance to amend. May I call your attention to the conflicting claims, as I have understood them, and I stated them fairly in my points and authorities, and Mr. Sokol, has not challenged them.

The plaintiffs contend that by virtue of the fact that they were required to remain upon the premises of the defendant for 24 hours a day they were under employment restraint under the Armour & Skidmore cases, and were entitled to time and one-half of their usual rate for 16 hours a day. I think [23] we can discard eight, because the decision of the Circuit Court of Appeals, in which certiorari has been consistently denied, as a matter of law establishes they are not entitled to eating and sleeping time. It has always been the rule that they were not entitled to that time.

Our answer, as Mr. Sokol has pointed out, and as we point out, and as we always intend to point out, simply says we paid a monthly salary. I don't think we used the word "impliedly." It says it was agreed. There was no express agreement. It depended on the circumstances, and everything else. Mr. Sokol has always contended that we show a different situation. Reading from our answer:

"Defendant further alleges that because of the nature of the employment, it was understood and agreed be-

tween each said substation operator and attendant and the said defendant that, evaluating the employment as a whole, the inactive duties of each said plaintiff and the normal active duties were the equivalent of eight hours of service.”

For which we paid them; and we also paid them overtime for anything performed during the night time hours. That was the allegation, and it was not denied.

If that were the contract, and they wanted to join with the contract, and say that was the contract, perhaps there would be the question of summary judgment, because under this [24] Act, if they said it was not the equivalent of eight hours, but was the equivalent for ten or twelve hours, then for that extra time you have no contract or no custom, to pay.

They are claiming they were paid for eight hours a day. They do not claim or admit they agreed to it. If they came in here and said: This is the contract that we sued on, that we allege, then we might be willing to meet them on the question of law as to the right to recover. Furthermore, if, instead of that, they alleged they were paid for all their time, and it amounted to more than ten hours, then they can't recover more than one-half of their time.

They claim that they have apprised us of their claim. They have not. It is not fair to this court, or to us. Let us know upon what theory they are now proceeding, because since this Act has been passed the law has been changed. One of two things is true: If our theory is correct, and their contract with us is as we allege and claim, then they stand out of court, without any recovery. I don't claim the court can decide that on our pleadings, but they certainly can't come in on our pleadings and say we agreed it was an eight hour job, and we paid them for

that, and any services in the night time. They can't say they can have jurisdiction of this court under the statute which says you can't proceed with any suit on activities which were customary, and not by contract.

Mr. Sokol made one statement, I think inadvertently, when [25] he said it was never intended to have this apply to any situation such as this. I want to read to your Honor again just exactly what was overlooked, appearing on page 69. If your Honor please, I again refer to the history of this legislation. The Senate drafted a bill which dealt only—I think it was 71; I am not quite certain of the number—which dealt only with pending claims, and they labeled it Portal to Portal. It was so limited. If that bill had been enacted by Congress we would not have been here this morning, because it would not have covered this case. I might want to retract that later, because I haven't read that bill for some time, but my impression is, as I read the Senate bill, that the bill was never enacted. The House passed the bill, that is, so far as pending claims were concerned. In some of these bills, so far as future claims were concerned, the language was different. It passed overwhelmingly. It went to the Senate. The Senate Judiciary Committee revised it by striking out everything the House did, and rewrote the bill, and then it was passed in accordance with the conference report. Sections 6 and 7, written by the Senate Committee, are the same, substantially, as Section 4 of this bill. It deals with future claims. In the House the following occurred:

“Mr. Hinshaw. The gentleman remembers the cases known as the stand-by cases which were brought out before his committee in which certain employees might be called [26] upon at some time not during their regular working time to perform some duty and

that many suits for wages have been instituted under that type of claim. Is that provided for in the present bill?

"Mr. Walter. Yes; we feel that under the language of section 2 (b) of this bill that type of arrangement is covered and that the employer is not liable.

"Mr. Hinshaw. The case I had in mind was one where there were certain persons who were left to guard electrical distribution stations where they were given a house and so forth and perhaps performed one or two labors per day and yet were paid on a monthly basis. Large suits were brought for time and a half for an additional 8 hours per day pursuant to the ruling of the court.

"Mr. Walter. We hope that we have met that situation and all of the situations that have been brought to our attention, because we had in mind that all of these portal-to-portal suits are in the nature of windfalls. None of the plaintiffs—and I say that advisedly—ever felt they were entitled to compensation for activities which are the basis of these suits."

This, of course, stands admitted here. These people entered our employ and accepted a monthly salary and overtime service for night time. Then when the Armour and Skidmore [27] cases came out they said they had not been paid for the services, and brought this suit.

What do they allege? They allege that they have performed overtime work more than 40 hours a week. When suit was brought, I thought it should be made more definite and certain. Judge Harrison, who heard the motion, did not think so, and denied the motion to make it more definite and certain. We proceeded on that theory. I .

challenge Mr. Sokol to say if it is not so, if actually their services were more than eight hours per day, they should be given some additional time. How much would be for your Honor to say, after you heard the evidence, if you thought it was in excess of eight hours, for that extra time he claims they haven't been paid, and were entitled to half. They would not be entitled to time and a half if their salary had been received by them in full compensation for everything, whether six or eight or twelve hours a day.

Our answer comes in. We have been consistent throughout. You can't find a single inconsistency in our answer, in our admission to interrogatories, or anything. We said: We employed you to do certain active services, which we don't think take more than two to five hours a day. You are allowed to stay on the premises. During that time you can do anything you please. You can engage in any activities that can be performed on our premises.

The Court: You are going into the merits, aren't you? [28]

Mr. Sterry: Yes. I am simply stating our position. So they had no restraint on that at all, except they could not leave the premises, and we agreed that was the equivalent of eight hours' service, for which we paid them, and which they accepted.

The Court: Is the contract with the defendant pleaded?

Mr. Sterry: The contract with the defendant is pleaded and relied on. They don't accept it. I think we have a right to know, and the court has a right to know what their position is. Do they claim they have a contract? There is a custom. They can take several positions, your Honor. I am not stating whether they can recover on them, but they are at liberty in the pleadings to take this

position, that they were actually under employment restraint for 24 hours a day, excluding sleeping and eating of eight to ten hours. They have, therefore, six to eight hours a day overtime for which they want time and a half, and they either have been paid their hourly rate for it, or they haven't been paid their hourly rate for it. If they take that position, we will meet that with the proper motion.

The next position they take is that they had a contract, such as we have alleged, but that actually there were more than eight hours a day, and it amounted to ten or twelve or fourteen hours,—whatever they want to claim, and that that was not paid for. We have a right to meet that both by motion [29] and answer. It is an injustice to this court and to ourselves.

We will have to make a motion to dismiss for want of jurisdiction, but I don't anticipate, nor anticipate that the court would grant that motion, except giving them the right to amend. Suppose this motion were denied. We then would have to go to an enormous expense, trying the case, just as though this Portal-to-Portal Act had not gone through. In fairness to them, to the court, and to everybody else, they should amend.

Mr. Sokol: Apparently you agree if we amend, and set up certain allegations, at least we can recover one-half?

Mr. Sterry: No, I have never agreed that.

The Court: Let us stay off the merits of the matter. Mr. Sterry has pointed out, as I understand it, that you rely upon a contract. You rely upon a custom and practice. The jurisdiction of this court will depend upon a statement to this effect, and he stated the ground of jurisdiction would have a highly beneficial effect of apprising the defendant of precisely the contract, and precisely the custom and practice upon which the plaintiff relies.

Mr. Sokol: I stated I would resolve this by submitting the matter for a summary judgment. I am content to do that. Your Honor, we started this action three years ago. What did we say in the complaint? We said we relied wholly and completely upon the records of the defendant. There is no [30] information of any kind or character we can supply.

The Court: Don't misunderstand me. The statement is only incidental of the grounds upon which jurisdiction depends. It also serves to apprise the defendant of precisely the basis of the claim. It seems to me that is the way the Portal-to-Portal Act was drafted. Perhaps, as Mr. Sterry suggested, it was done so definitely, without regard to meeting any constitutional question, but for the sole purpose of enabling the defendants to compel the plaintiffs to specify with particularity the grounds of the claim. Mr. Sokol, you won't agree that the contract which the defendant pleaded is the contract which you claim?

Mr. Sokol: I do so agree, your Honor, together with the express agreement which is in evidence.

The Court: If you agree to that, you are out of court, aren't you?

Mr. Sokol: No.

The Court: The defendant says, we contracted with these plaintiffs, and both parties agreed that due to the nature of the work, and the inherent inability to keep accurate time, it would all be considered eight hours. Do you agree that that is the contract?

Mr. Sokol: No, your Honor.

The Court: Then that is not the contract under which the plaintiffs seek to recover, is it? [31]

Mr. Sokol: This is the contract—

The Court: Then you must plead it.

Mr. Sokol: It has already been presented in evidence.

The Court: Has it been pleaded? Is it in the complaint?

Mr. Sterry: Mr. Sokol, if it were not for the fact that your error would also be my error, I would permit you to go ahead on that basis.

Mr. Sokol: I am perfectly willing.

The Court: Even if you are willing, I am not. I am going to sustain the motions upon the first ground, and give you leave to file an amendment to the second amended complaint, stating precisely the ground upon which the jurisdiction of this court depends, in view of the Portal-to-Portal Act, and that, as I conceive it, would be a precise statement to show that the claim is compensable within the meaning of the Portal-to-Portal Act, under such contract. It seems to me it would be incumbent upon the plaintiffs to plead the contract under which they claim; to plead the custom and practice upon which they rely.

Mr. Sokol: Your Honor has ruled; but I believe the chief executive of this nation, when he signed this Act, spoke for the courts of the land, and for our whole nation. I would like to have an opportunity, before your Honor rules, to develop that further. I think the ruling of this court takes a position which is contrary to the Chief Executive's opinion. [32]

The Court: In view of that remark, Mr. Sokol, I want to ask you this question: How can this court, in the face of the second amended complaint, determine whether the time for which compensation is sought falls within the exclusion of the Portal-to-Portal Act, or not?

Mr. Sokol: I would be very content to submit it on a summary judgment.

The Court: How can the court determine whether the time claimed is claimed under a contract, written or unwritten, or is claimed under some custom or practice sanctioned by the Act?

Mr. Sokol: That is a matter of proof.

The Court: That is, custom or practice for which recovery is sanctioned. What harm can come to these plaintiffs by filing a two-page amendment to the complaint, saying we claim that the contract under which we are entitled to recover was this; or we claim that the custom or practice under which we are entitled to recover is that? Can any harm come?

Mr. Sokol: Only this, your Honor; we are actually relying upon the records of the company, and it is for the court to interpret those records. I will merely attach those as exhibits, and say that is the contract we are relying upon.

The Court: Then the defendant will have plaintiffs on record, and more important, the court would have before it the contract under which the plaintiffs claim that Congress has expressly given this court jurisdiction. Or, to put it [33] negatively, the court will know that the claim asserted is not a claim to which Congress has recently deprived this court of jurisdiction.

Mr. Sokol: May we have 30 days?

Mr. Sterry: If your Honor please, may I answer that thus: In all my years of practice I have never met an opponent that has been more courteous than Mr. Sokol. I am willing to give him any time he wishes, and while I don't like to bring personal matters in, I am just a little worried about myself recently. My nerve energy has been exhausted, and I do want to arrange for some time to be away. If this goes over to the 11th of August, then we will have to file some motions, and it might not be possible to take it up until in September. I am more than willing to have him granted that time, but in that event I should like to have it understood that the matter should not be heard before the 1st of January.

The Court: I take it, in view of what Mr. Sokol said this morning, since the contract under which the plaintiffs claim is already here, that he very likely will move for summary judgment.

Mr. Sterry: If I could be certain that within the next 30 days I will file pleadings in conformity with his statements here, I would have no more concern about this case. My apprehension is between now and 30 days. There will be an entire change of theory. I am perfectly willing that counsel should [34] have any reasonable time he wants.

Mr. Sokol: I think I can do it in 20 days.

The Court: Let it be understood that should any motions be noticed, that they be noticed early in September.

Mr. Sterry: I will notice them early in September. Then I want it understood, Mr. Sokol, that if the matter should not be disposed of, and there are any motions, and there should be issues claimed, then I will notify you, and I may ask for a short continuance of the trial.

Mr. Sokol: Can I respectfully request a date? I intend filing the motion for a summary judgment at the time I amend.

The Court: I can hear the motions on September 5th, and I will set aside that time, if you are confident you are going to file that motion.

Mr. Sterry: If your Honor please, I don't think having the matter on the 5th of September, that I can possibly be prepared, without sacrifices both professionally and personally, which I am unwilling to make.

The Court: Let us choose another date.

Mr. Sterry: I would suggest any time after January. (Further discussion as to setting.)

The Court: I will enter an order at this time vacating the setting heretofore made for Tuesday, November 11, 1947, and reset the cases for trial on February 3rd, 1948.

* * * * *

[Endorsed]: Filed Oct. 14, 1947. Edmund L. Smith, Clerk. [35]

[Endorsed]: No. 12070. United States Court of Appeals for the Ninth Circuit. Myron E. Glenn, et al., Appellants, vs. Southern California Edison Company, Ltd., Appellee. Transcript of Record. Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed October 22, 1948.

PAUL P. O'BRIEN

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals for the
Ninth Circuit

No. 12070

(D. C. Civil Action No. 4327-WM)

MYRON E. GLENN, et al.,

Plaintiffs-Appellants,

v.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD., a corporation,

Defendant-Appellee.

STIPULATION EXTENDING PERIOD FOR FIL-
ING AND DOCKETING RECORD ON APPEAL

It Is Hereby Stipulated by and between the attorneys
for the respective parties hereto:

The time for filing the record on appeal and docketing
the action in the Circuit Court of Appeals for the Ninth
Circuit is, subject to the approval of the Court, extended
to and including October 25, 1948.

Dated: September 23, 1948.

DAVID SOKOL and

PACHT, WARNE, ROSS & BERNHARD,

By Bernard Reich

Attorneys for Plaintiffs-Appellants

NORMAN S. STERRY
GIBSON, DUNN & CRUTCHER and
GAIL C. LARKIN,
E. W. CUNNINGHAM and
ROLLIN W. WOODBURY

By Norman S. Sterry
Attorneys for Defendant-Appellee

It Is So Ordered.

Dated: September 27, 1948.

CLIFTON MATHEWS

United States Circuit Court Judge

[Endorsed]: Filed Sep. 27, 1948. Paul P. O'Brien,
Clerk.

United States Court of Appeals for the Ninth Circuit

No. 12070

MYRON E. GLENN, et al.,

Plaintiffs-Appellants,

v.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD., a corporation,

Defendant-Appellee.

No. 12071

RAYMOND F. DRAKE, et al.,

Plaintiffs-Appellants,

v.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD., a corporation,

Defendant-Appellee.

ORDER DISPENSING WITH PRINTING OF CER-
TAIN PORTIONS OF THE RECORDS ON AP-
PEAL

Upon the application of Pacht, Warne, Ross & Bern-
hard by Bernard Reich, attorneys for the plaintiffs-appel-
lants in the above entitled actions, and upon the affidavit
of Bernard Reich, sworn to the 12th day of November,
1948, in support of the said application, and the consent
of Norman S. Sterry, Esq., one of the attorneys for the
defendant-appellee in the above entitled actions, and upon

the entire record and proceedings in this court; now, therefore,

It Is Hereby Ordered that the following papers now on file in the office of the Clerk of the above entitled court and which have been designated by one or the other of the parties as part of the records on appeal need not, however, be printed:

(a) All depositions.

(b) All exhibits introduced and as shown by the index to the reporter's transcript of the pretrial hearing dated November 18, 1946, including but not limited to the exhibits enumerated in defendant's specification #17 of its "Defendant's Designation of Additional Portions of Record", dated August 17, 1948, marked Defendant's Exhibits "A" through "CJ".

Said depositions and exhibits shall nevertheless be considered as part of the records on appeal and may be referred to and reproduced in the respective briefs of counsel.

Dated: San Francisco, California, November 15, 1948.

WILLIAM DENMAN

Chief Judge, U. S. Court of Appeals for the
Ninth Circuit

[Title of United States Court of Appeals and Cause]

No. 12070 No. 12071

AFFIDAVIT OF BERNARD REICH IN SUPPORT
OF APPLICATION FOR AN ORDER DIS-
PENSING WITH PRINTING OF CERTAIN
PORTIONS OF THE RECORDS ON APPEAL

State of California

County of Los Angeles—ss:

Bernard Reich being first duly sworn, deposes and says:

1. I am an attorney and counselor at law duly admitted to practice in all of the courts of the State of California, the United States District Court for the Southern District of California, the United States Circuit Court of Appeals, now the United States Court of Appeals for the Ninth Circuit, and am one of the attorneys for the plaintiffs-appellants in the above entitled actions.

2. The Clerk of the United States District Court has transmitted to this court the records on appeal in the above cases, including certain original papers, namely, depositions and exhibits.

3. On October 11th and 12th, 1948, the parties, through their attorneys and by an exchange of letters, stipulated that the defendant could include in the records on appeal four depositions which had not been filed but to which counsel for the defendant had referred in the course of his argument on defendant's motion for summary judgment, and the parties, likewise through their attorneys, stipulated that the call-out sheets, other, like and cumbersome exhibits and the depositions, subject to the

approval of the Court, need not be printed except that the depositions or parts of them might be made part of the appendix of the briefs or that those parts of the depositions would be printed to which counsel might wish to refer in their briefs.

4. This Court has extended the time mentioned in Subdivision 6 of Rule 19 of the Rules of the United States Court of Appeals, Ninth Circuit, to December 1, 1948, upon the parties' stipulation, through their attorneys, that they desire to present to the Court as simple and as short a record as is possible under the circumstances, and that certain of the exhibits need not be printed, and that none of the depositions need be printed except either as part of the appendix to the several briefs or except those parts to which counsel may wish to refer in their briefs.

5. These appeals come to the Court from orders in the nature of summary judgment dismissing the complaints. The matters were about to go to trial after extended depositions, interrogatories and requests for admissions had been made and answered when the orders and judgments appealed from were made by the Court below. The records on appeal, therefore, are most extensive and include, among other things, 12 depositions and possibly over 50 exhibits, the latter being part of the pretrial had below.

6. The plaintiffs and appellants in these cases are poor working people and employees of the defendant-appellee. Most of them make less than \$200.00 a month upon which to support themselves and their families. As counsel, we

have been advised by them that they do not have any money with which to finance the appeals. The Clerk of this court has advised us that the printing costs, if all of the record is printed, will amount to a little under \$4000.00, and this on appeals from judgments dismissing the complaints without trial.

7. As stated, the defendant does not oppose this application but on the contrary, through counsel, has once stipulated in an exchange of letters to dispense with the printing of these original documents on file with this court.

8. Attached hereto and made a part hereof is the original of a letter dated November 10, 1948, and signed by Mr. Norman S. Sterry as attorney for the defendant-appellee, consenting to an order dispensing with the printing of portions of the records as indicated.

9. It will be noted that Mr. Sterry speaks of a conversation with Mr. O'Brien. It occurs to your deponent that Mr. Sterry had apparently neglected, quite inadvertently, to relate all of the facts and circumstances of these cases to Mr. O'Brien.

10. The elimination of a great deal of unnecessary printing, it would seem to your deponent, not only would make it possible for the plaintiffs-appellants to perfect their appeals, but would be in complete conformity with the very character of the Fair Labor Standards Act which is the basis for the suits herein. Provisions for costs and attorneys' fees strongly indicate that it was the sense of Congress that employees suing under the said Act should

be given every consideration in order to sustain valid and existing claims.

11. Your deponent respectfully prays that the Court make and enter its order as proposed herein.

BERNARD REICH

Sworn to before me this 12th day of November, 1948.

(Seal)

ANNA TAYLOR

Notary Public in and for Said County and State

GIBSON, DUNN & CRUTCHER

Lawyers

634 South Spring Street

Los Angeles 14, California

MUtual 5381

* * * * *

November 10, 1948

Mr. Bernard Reich
9700 Wilshire Boulevard
Beverly Hills, California
My dear Mr. Reich:

Re: Glenn vs. Southern California Edison Company, Ltd.
Drake vs. " " " " "

I am writing this letter because I am leaving town to be gone until after the 1st day of December. I left about the middle of October for a very much needed vacation, but an injury to my leg, which resulted in a bad infection, kept me on my back for about three weeks of the time, necessitating my flying down here for hospitalization. Hence, since I have now recovered I am anxious to get back to the Rogue for the balance of this month.

Before my departure in October we had several discussions regarding the portions of the record which should be printed, and you wanted a stipulation to the effect that the printing of these depositions could be dispensed with and we agreed we would make such a stipulation, subject to the approval of the court, or would read through the depositions and designate the printing of only those portions we thought necessary to our defense. As I did not expect to be back before the 1st of December and could not undertake that work (and there was no one else who could do so) before I left, we stipulated for an extension of time within which to file the record to sometime in January, but the court cut the time down to the 1st of December.

You sent me a stipulation providing, among other things, that the depositions need not be printed. I have not signed it for the reason that I discussed the matter with Mr. O'Brien over the telephone and he stated to me that he felt that it was proper for us to stipulate that the exhibits introduced at the pretrial hearing of November 8, 1946, consisting of charts showing the call-out time and the digest of logs should not be printed, but that he did not think that the depositions should be so handled and did not believe the court would approve such stipulation. I am, therefore, prepared to designate the portions of the depositions on which we will rely, which will be the major portions of said depositions.

If you can obtain an order from the court dispensing with the printing of these depositions and providing that

they be a part of the record to be considered by the court on appeal, that will be perfectly agreeable to me. You have stated that you thought we could print such portions of the depositions in the appendix to our brief or in our brief. I do not want to have to lengthen the brief by printing in the brief itself or in the appendix portions of the depositions. Due to the fact that the depositions are, of course, in the form of question and answer, we might have to print five or six pages to establish a simple fact that can be stated in a half dozen words with appropriate citations to the record. If the court is willing to dispense with the printing of the depositions and will allow us to refer to the depositions by citing the page and line, that will be perfectly agreeable to me, and this letter is written to confirm that, so that you can make application for dispensing with the printing of those depositions on condition they be and remain a part of the record. From what Mr. O'Brien stated to me, I do not believe you can obtain such an order and unless the court will make such an order we shall designate the portions of the depositions we rely on, which, as I have stated, will be the principal portions of those depositions.

Very truly yours,

Norman S. Sterry

NSS-gw

Norman S. Sterry

[Endorsed]: Filed Nov. 15, 1948. Paul P. O'Brien,
Clerk.

United States Court of Appeals for the Ninth Circuit

No. 12070

MYRON E. GLENN, et al.,

Plaintiffs-Appellants,

v.

SOUTHERN CALIFORNIA EDISON COMPANY,
LTD., a corporation,

Defendant-Appellee.

APPELLANTS' STATEMENT OF POINTS AND
DESIGNATION OF PORTIONS OF RECORD
FOR PRINTING

To the Clerk of the Above Entitled Court, to the Defendant-Appellee Above Named, and to Its Attorneys, Gail C. Larkin, E. W. Cunningham, Rollin E. Woodbury, Norman S. Sterry, Gibson, Dunn & Crutcher, Esqs.:

The following is the concise statement of points on which plaintiffs-appellants intend to rely on the appeal herein:

Statement of Points

I.

The trial Court erred in granting defendant-appellee's motion for summary judgment.

II.

The trial Court erred in not making and filing findings of fact and conclusions of law.

III.

The trial Court erred in dismissing the action for lack of jurisdiction of the subject matter of the action.

IV.

The trial Court erred in ruling that plaintiffs-appellants were not entitled to overtime compensation under the Fair Labor Standards Act of 1938, as amended.

V.

The trial Court erred in ruling that the certain activities alleged to have been engaged in by each plaintiff-appellant employed were made non-compensable by the Portal-to-Portal Act of 1947.

VI.

The trial Court erred in ruling that the Portal-to-Portal Act of 1947 was and is constitutional generally and as applied to the facts in this case.

VII.

The trial Court erred in ruling that defendant-appellee's motion for summary judgment should be granted.

VIII.

The trial Court erred in ruling that the action seeks to impose a liability upon the defendant employer as to each plaintiff-appellant for alleged activities which were not compensable within the purview of subsections (a) and (b) of section 2 of the Portal-to-Portal Act of 1947.

IX.

The trial Court erred in ruling that under subsection (d) of said section 2 of the Portal-to-Portal Act of 1947 the Court is without jurisdiction of the subject matter of said action.

Designation of Record for Printing

Plaintiffs-appellants designate for printing in the record on appeal the following:

* * * * *

Dated: November 22, 1948.

DAVID SOKOL and

PACHT, WARNE, ROSS & BERNHARD,

By Bernard Reich

Attorneys for Plaintiffs-Appellants.

[Affidavit of Service by Mail.]

[Endorsed]: Filed Nov. 26, 1948. Paul P. O'Brien,
Clerk.

